

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CUC DANG,

PLAINTIFF,

CASE NO. CV-10-02181-RMW

VS.

SAN JOSE, CALIFORNIA

SUTTER'S PLACE, INC., DBA BAY
101 OR BAY 101 CASINO, UNITE
HERE! LOCAL 19, AND DOES 1
THROUGH 20, INCLUSIVE,

APRIL 30, 2013

VOLUME 1

PAGES 1 - 156

DEFENDANTS.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE AND A JURY

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: ROBINSON & WOOD, INC.
BY: ANN A.P. NGUYEN
227 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95113

ALSO PRESENT: ANDRE THOMAS

FOR THE DEFENDANTS: MCMANIS FAULKNER
BY: JAMES MCMANIS
JENNIFER MURAKAMI
FAIRMONT PLAZA
10TH FLOOR
50 W. SAN FERNANDO STREET
SAN JOSE, CALIFORNIA 95113

ALSO PRESENT: CINDY MCCLELEN

OFFICIAL COURT REPORTERS: IRENE L. RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074
LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER

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1 SAN JOSE, CALIFORNIA

APRIL 30, 2013

2 P R O C E E D I N G S

3 (JURY OUT AT 8:33 A.M.)

4 MS. NGUYEN: GOOD MORNING.

5 MR. MCMANIS: GOOD MORNING.

6 THE COURT: I UNDERSTAND THERE'S AN ISSUE.

7 MS. NGUYEN: YESTERDAY WHEN WE WERE PROVIDED THE
8 EXHIBITS FOR THE FIRST WITNESS, WE HAD OBJECTIONS THAT WERE
9 LODGED BEFORE, BUT WE NEVER GOT RULINGS ON THEM AND I WANTED TO
10 MAKE SURE WE BROUGHT THIS UP OUT OF THE JURY'S PRESENCE.11 THE COURT: WHY IS IT COMING UP NOW? I THOUGHT I
12 MADE THIS CLEAR YESTERDAY THAT THIS IS JURY TIME. THIS IS NOT
13 TIME FOR US TO BE TAKING UP ISSUES.14 MS. NGUYEN: THIS IS FOR THE CROSS-EXAMINATION OR
15 THE DIRECT/CROSS OF THE FIRST WITNESS. WE CAN DO IT DURING THE
16 BREAK IF YOU WOULD LIKE.17 I DIDN'T KNOW ABOUT THE EXHIBITS THAT THE OTHER SIDE WAS
18 GOING TO USE UNTIL AN HOUR AFTER THE TRIAL DAY ENDED YESTERDAY.

19 THE COURT: WHAT IS THE ISSUE?

20 MS. NGUYEN: JUST SOME OF THE EXHIBITS. I HAVE
21 OBJECTIONS TO THEM BASED ON HEARSAY, BASED ON INFORMATION THAT
22 THEY WANT TO BRING IN, THE MEDIATOR'S OPINION.23 SO THOSE ARE SPECIFIC OBJECTIONS. SO I CAN GO THROUGH
24 EACH ONE OF THEM RIGHT NOW IF YOUR HONOR WOULD LIKE.

25 THE COURT: QUICKLY TELL ME.

1 MS. NGUYEN: SO FOR EXHIBIT 500 AND 551 --

2 THE COURT: THIS IS THE FIRST WITNESS?

3 MS. NGUYEN: YES, YOUR HONOR. THAT'S MR. WERNER.

4 THE COURT: AND WHAT ONE?

5 MS. NGUYEN: AND 500 IS THE INVESTIGATION REPORT OF
6 CAROLE EDMAN AND IT HAS HEARSAY ON HEARSAY ON HEARSAY, YOUR
7 HONOR.

8 THE COURT: DO YOU INTEND TO OFFER THE WHOLE REPORT?

9 MS. NGUYEN: YES, WE DO. AND WE'RE NOT OFFERING
10 IT -- IT'S NOT HEARSAY. IT'S NOT GOING TO BE OFFERED FOR THE
11 TRUTH OF ANYTHING STATED IN THERE, BUT TO SHOW WHAT REPORT
12 MR. WERNER AND BAY 101 RECEIVED FROM THE INDEPENDENT
13 INVESTIGATION WHICH GOES TO SHOW THEIR STATE OF MIND IN TERMS
14 OF TERMINATING HER, OR BEFORE THEY TERMINATED HER, ADOPTING A
15 PLAN FOR HER PERFORMANCE IMPROVEMENT.

16 I THINK IT CLEARLY COMES IN SUBJECT TO A LIMITING
17 INSTRUCTION THAT IT'S NOT TO BE SUBJECT TO THE TRUTH OF
18 ANYTHING STATED THEREIN, BUT TO SHOW WHAT MR. WERNER AND
19 BAY 101 RECEIVED AS A RESULT OF THIS INVESTIGATION.

20 THE COURT: OKAY. WHAT ELSE IS YOUR CONCERN? WHAT
21 OTHER EXHIBITS?

22 MS. NGUYEN: OTHER EXHIBITS, YOUR HONOR, 505, 506,
23 527. THOSE ARE ALL EMPLOYEE'S WRITTEN STATEMENTS THAT WERE
24 GATHERED BY THE SUPERVISORS AND THEY'RE ALL HEARSAY.

25 IF THOSE EMPLOYEES WANT TO COME AND TESTIFY, THEY CAN.

1 BUT EVERYTHING THEY'RE REPORTING THERE IS HEARSAY AND
2 THEY'RE TRYING TO GET IT ADMITTED FOR THE TRUTH OF THE MATTER,
3 JUST AS THE INVESTIGATOR'S REPORT.

4 MR. McMANIS: ONCE AGAIN, THOSE ARE NOT BEING
5 OFFERED FOR THE TRUTH OF THE MATTER STATED, BUT TO SHOW INTENT,
6 STATE OF MIND, KNOWLEDGE.

7 FOR EXAMPLE, IF MR. WERNER RECEIVED A REPORT SAYING THAT
8 THE PLAINTIFF WAS DRUNK ON THE JOB AND WAS TAKING MONEY FROM
9 THE CASH REGISTER -- I'M MAKING THIS UP, BUT TO ILLUSTRATE THE
10 POINT -- HE'S ENTITLED TO RELY ON THOSE REPORTS.

11 HE WILL TESTIFY THAT HE DID RELY ON THOSE REPORTS IN
12 TAKING THE ACTIONS THAT HE DID. IT ABSOLUTELY REBUTS THE
13 SUGGESTION BY THE PLAINTIFF THAT THIS IS SOMEHOW A
14 DISCRIMINATORY INTENT, RETALIATION, WHAT HAVE YOU.

15 THE COURT: WHAT ELSE DO YOU HAVE?

16 MS. NGUYEN: EXHIBIT 530 AND 531, YOUR HONOR, I
17 BELIEVE THEY'RE MEDIATOR'S OPINIONS, THE UNION MEDIATOR'S, AND
18 SO THOSE ARE ALL COVERED UNDER THE MEDIATOR'S PRIVILEGE, AS
19 WELL AS HEARSAY.

20 MR. McMANIS: WITH RESPECT TO 530 AND 531, I AGREE
21 WITH COUNSEL. WE DON'T INTEND TO OFFER THOSE UNLESS SOMETHING
22 COMES UP IN THE PLAINTIFF'S CASE THAT WE THINK IT'S RELEVANT,
23 IN WHICH CASE WE'LL TAKE IT UP WITH THE COURT BEFORE WE MENTION
24 IT TO THE JURY.

25 MS. NGUYEN: 503, 528 AND 548, 549, AND 550. AGAIN,

1 THOSE ARE ALL HEARSAY, MEMOS AND STATEMENTS BY EMPLOYEES AT
2 BAY 101, YOUR HONOR.

3 IF THEY WANT TO BRING IN THE EMPLOYEES, THEY CAN.

4 BUT THOSE ARE ALL HEARSAY REPORTS BY EMPLOYEES AFTER THE
5 FACT.

6 THE COURT: THEY'RE HEARSAY IF THEY'RE BEING OFFERED
7 FOR THE TRUTH OF THE MATTER STATED.

8 BUT THE QUESTION IS WHETHER OR NOT BAY 101 HAD JUST CAUSE
9 TO DO WHAT IT DID, AND WHAT THEY WERE TOLD, EVEN THOUGH IT MAY
10 NOT BE TRUE, CERTAINLY AFFECTS THEIR STATE OF MIND AND THE
11 REASONABLENESS OF THEIR ACTION.

12 MR. MCMANIS: THAT'S RIGHT.

13 MS. NGUYEN: BUT, YOUR HONOR, THE REPORT CONTAINS
14 ALL OF THE INTERVIEWS AND NOTES AND FILES THAT ARE HEARSAY UPON
15 HEARSAY.

16 THE INVESTIGATOR CAN COME IN AND TALK ABOUT IT. THE
17 ACTUAL EMPLOYEES CAN COME IN AND TESTIFY.

18 THE COURT: I THINK, WITH THE PROPER LIMITING
19 INSTRUCTION, THOSE ARE ADMISSIBLE.

20 MR. MCMANIS: THANK YOU, YOUR HONOR.

21 THE COURT: ALL RIGHT. WE'LL TAKE UP ANY THAT WE
22 HAVEN'T REACHED AT THE BREAK BECAUSE I REALLY WANT TO -- THIS
23 IS JURY TIME.

24 MS. NGUYEN: OKAY, YOUR HONOR.

25 (JURY IN AT 8:41 A.M.)

1 THE COURT: ALL RIGHT. GOOD MORNING.

2 I TOLD YOU YESTERDAY THAT WE WOULD START TODAY WITH SOME
3 PRELIMINARY INSTRUCTIONS, WHICH I WILL NOW GIVE TO YOU.

4 LADIES AND GENTLEMEN, YOU ARE NOW THE JURY IN THIS CASE.

5 IT IS MY DUTY TO INSTRUCT YOU ON THE LAW. THESE INSTRUCTIONS
6 ARE PRELIMINARY INSTRUCTIONS TO HELP YOU UNDERSTAND THE
7 PRINCIPLES THAT APPLY TO CIVIL TRIALS AND HELP YOU UNDERSTAND
8 THE EVIDENCE AS YOU LISTEN TO IT.

9 AT THE END OF THE TRIAL I WILL GIVE YOU A FINAL SET OF
10 INSTRUCTIONS, AND THOSE WILL BE IN WRITING. IT IS THE FINAL
11 SET OF INSTRUCTIONS WHICH WILL GOVERN YOUR DELIBERATIONS.

12 YOU MUST NOT INFER FROM THESE INSTRUCTIONS OR FROM
13 ANYTHING THAT I MAY SAY OR DO AS INDICATING THAT I HAVE AN
14 OPINION REGARDING THE EVIDENCE OR WHAT YOUR VERDICT SHOULD BE.

15 IT IS YOUR DUTY TO FIND THE FACTS FROM ALL OF THE EVIDENCE
16 IN THE CASE AND TO THOSE FACTS APPLY TO THE LAW AS I GIVE IT TO
17 YOU.

18 YOU MUST FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER YOU
19 AGREE WITH IT OR NOT.

20 YOU MUST NOT BE INFLUENCED BY ANY PERSONAL LIKES OR
21 DISLIKES, OPINIONS, PREJUDICES OR SYMPATHY. THAT MEANS THAT
22 YOU MUST DECIDE THE CASE SOLELY ON THE EVIDENCE BEFORE YOU.

23 YOU WILL RECALL THAT YOU TOOK AN OATH TO DO SO.

24 IN FOLLOWING MY INSTRUCTIONS, YOU MUST FOLLOW ALL OF THEM
25 AND NOT SINGLE OUT SOME AND IGNORE OTHERS. THEY ARE ALL

1 IMPORTANT.

2 TO HELP YOU UNDERSTAND WHAT THE TRIAL IS ABOUT, I WILL
3 GIVE YOU A BRIEF SUMMARY OF THE CASE.

4 DEFENDANT SUTTER'S PLACE, DOING BUSINESS AS BAY 101, IS A
5 CARD ROOM IN SAN JOSE.

6 PLAINTIFF CUC DANG IS A VIETNAMESE AMERICAN WOMAN WHO USED
7 TO WORK AT BAY 101 AS A COOK AND, LATER, AS A SERVER.

8 MS. DANG CLAIMS THAT SHE WAS SEXUALLY HARASSED BY A
9 COWORKER SHORTLY AFTER SHE BEGAN WORKING AT BAY 101 IN 2006.

10 BAY 101 DENIES THAT MS. DANG WAS SEXUALLY HARASSED.

11 AFTER SHE SUBMITTED A WRITTEN COMPLAINT REGARDING HER
12 HARASSMENT IN APRIL OF 2007, BAY 101 TRANSFERRED HER TO A
13 DIFFERENT SHIFT.

14 MS. DANG CONTENDS THAT AFTER THE SHIFT TRANSFER, SHE
15 CONTINUED TO EXPERIENCE A HOSTILE WORKING ENVIRONMENT DUE TO
16 DISCRIMINATION AND RETALIATION FROM HER SUPERVISOR.

17 IN OCTOBER 2009, MS. DANG WAS SUSPENDED FOR VIOLATING A
18 COMPANY RULE.

19 SHORTLY AFTER HER SUSPENSION, SHE SENT A LETTER TO BAY 101
20 MANAGEMENT COMPLAINING OF DISCRIMINATION AND RETALIATION DUE TO
21 HER BEING A WOMAN AND VIETNAMESE AND THAT THE DISCIPLINE IN
22 OCTOBER 2009 WAS IN RETALIATION FOR HER PREVIOUS COMPLAINTS.

23 ON DECEMBER 21ST, 2009, MS. DANG'S EMPLOYMENT WAS
24 TERMINATED BY BAY 101. SHE CONTENDS THAT HER EMPLOYMENT WAS
25 TERMINATED BECAUSE SHE IS FEMALE AND VIETNAMESE AND IN

1 RETALIATION FOR COMPLAINING TO BAY 101 ABOUT DISCRIMINATION,
2 HARASSMENT AND RETALIATION.

3 MS. DANG ALSO CONTENDS THAT SHE SUFFERED HARASSMENT THAT
4 CREATED A HOSTILE ENVIRONMENT.

5 BAY 101 DENIES THAT THERE WAS A HOSTILE WORK ENVIRONMENT
6 AND THAT MS. DANG'S GENDER, RACE, OR NATIONAL ORIGIN OR HER
7 COMPLAINTS ABOUT HARASSMENT WERE A FACTOR IN TERMINATING HER
8 EMPLOYMENT.

9 BAY 101 CONTENDS THAT MS. DANG WAS DISCIPLINED FOR
10 VIOLATING BAY 101 POLICIES AND THAT HER EMPLOYMENT WAS
11 TERMINATED DUE TO INSUBORDINATION.

12 MS. DANG FURTHER CONTENDS THAT SHE WAS NOT ABLE TO TAKE
13 ALL OF HER MEAL AND REST BREAKS AND IS OWED OVERTIME WAGES.

14 BAY 101 CONTENDS THAT IT PROVIDED MEAL BREAKS, AUTHORIZED
15 AND PERMITTED REST BREAKS, AND DENIES THAT IT OWES HER OVERTIME
16 WAGES.

17 IN ORDER TO PREVAIL ON ANY CLAIM, MS. DANG HAS THE BURDEN
18 TO PROVE EACH OF HER CLAIMS BY A PREPONDERANCE OF THE EVIDENCE.

19 THAT MEANS YOU MUST BE PERSUADED BY THE EVIDENCE THAT THE
20 CLAIM IS MORE LIKELY TRUE THAN NOT TRUE.

21 YOU SHOULD BASE YOUR DECISION ON ALL OF THE EVIDENCE,
22 REGARDLESS OF WHICH PARTY PRESENTED IT.

23 THE EVIDENCE YOU ARE TO CONSIDER IN DECIDING WHAT THE
24 FACTS ARE CONTESTS OF:

25 1. THE SWORN TESTIMONY OF ANY WITNESS;

1 2. THE EXHIBITS WHICH ARE RECEIVED INTO EVIDENCE; AND,

2 3. ANY FACTS TO WHICH THE LAWYERS HAVE AGREED.

3 IN REACHING YOUR VERDICT, YOU MAY CONSIDER ONLY THE

4 TESTIMONY AND EXHIBITS RECEIVED INTO EVIDENCE.

5 CERTAIN THINGS ARE NOT EVIDENCE AND YOU MAY NOT CONSIDER

6 THEM IN DECIDING WHAT THE FACTS ARE. I WILL LIST THEM FOR YOU:

7 1. ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT EVIDENCE.

8 THE LAWYERS ARE NOT WITNESSES. WHAT THEY WILL SAY IN THEIR

9 OPENING STATEMENTS AND CLOSING ARGUMENTS AND AT OTHER TIMES IS

10 INTENDED TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT

11 EVIDENCE.

12 IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THAT

13 THE LAWYERS HAVE STATED THEM, YOUR MEMORY OF THEM CONTROLS.

14 QUESTIONS BY LAWYERS ARE NOT EVIDENCE, ALTHOUGH YOU NEED

15 TO CONSIDER A LAWYER'S QUESTIONS TO UNDERSTAND THE ANSWERS

16 GIVEN BY THE WITNESS.

17 THE LAWYER'S OBJECTIONS TO QUESTIONS ARE NOT EVIDENCE.

18 ATTORNEYS HAVE A DUTY TO THEIR CLIENTS WHEN THEY BELIEVE A

19 QUESTION IS IMPROPER UNDER THE RULES OF EVIDENCE. YOU SHOULD

20 NOT BE INFLUENCED BY THE OBJECTION OR THE COURT'S RULING ON IT.

21 TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN OR THAT YOU

22 HAVE BEEN INSTRUCTED TO DISREGARD IS NOT EVIDENCE AND MUST NOT

23 BE CONSIDERED.

24 IN ADDITION, SOMETIMES TESTIMONY AND EXHIBITS ARE RECEIVED

25 ONLY FOR A LIMITED PURPOSE.

1 WHEN I GIVE A LIMITING INSTRUCTION, YOU MUST FOLLOW IT.

2 ANYTHING THAT YOU MAY HAVE SEEN OR HEARD WHEN THE COURT
3 WAS NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE CASE
4 SOLELY ON THE EVIDENCE RECEIVED AT THE TRIAL.

5 SOME EVIDENCE MAY BE ADMITTED FOR A LIMITED PURPOSE. WHEN
6 I INSTRUCT YOU THAT AN ITEM OF EVIDENCE HAS BEEN ADMITTED FOR A
7 LIMITED PURPOSE, YOU MUST CONSIDER IT ONLY FOR THAT LIMITED
8 PURPOSE AND FOR NO OTHER.

9 EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE
10 IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS ABOUT
11 WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID.

12 CIRCUMSTANTIAL EVIDENCE IS PROOF OF ONE OR MORE FACTS FROM
13 WHICH YOU COULD FIND ANOTHER FACT.

14 BY WAY OF EXAMPLE, IF YOU WAKE UP IN THE MORNING AND YOU
15 SEE THAT THE SIDEWALK IS WET, YOU MAY FIND FROM THAT FACT THAT
16 IT RAINED DURING THE NIGHT.

17 HOWEVER, OTHER EVIDENCE, SUCH AS A TURNED ON GARDEN HOSE,
18 MAY PROVIDE A DIFFERENT EXPLANATION FOR THE PRESENCE OF THE
19 WATER ON THE SIDEWALK.

20 THEREFORE, BEFORE YOU DECIDE THAT A FACT HAS BEEN PROVED
21 BY CIRCUMSTANTIAL EVIDENCE, YOU MUST CONSIDER ALL OF THE
22 EVIDENCE IN LIGHT OF REASON, EXPERIENCE, AND COMMON SENSE.

23 YOU SHOULD CONSIDER BOTH KINDS OF EVIDENCE. THE LAW MAKES
24 NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT
25 OR CIRCUMSTANTIAL EVIDENCE.

1 IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY
2 EVIDENCE.

3 THERE ARE RULES OF EVIDENCE THAT CONTROL WHAT CAN BE
4 RECEIVED IN EVIDENCE.

5 WHEN A LAWYER ASKS A QUESTION OR OFFERS AN EXHIBIT INTO
6 EVIDENCE AND THE LAWYER ON THE OTHER SIDE THINKS IT'S NOT
7 PERMITTED BY THE RULES OF EVIDENCE, THAT LAWYER MAY OBJECT.

8 IF I OVERRULE THE OBJECTION, THE QUESTION MAY BE ANSWERED
9 AND THE EXHIBIT RECEIVED.

10 IF I SUSTAIN THE OBJECTION, THE QUESTION CANNOT BE
11 ANSWERED AND THE EXHIBIT CANNOT BE RECEIVED.

12 WHENEVER I SUSTAIN AN OBJECTION TO A QUESTION, YOU MUST
13 IGNORE THE QUESTION AND YOU MUST NOT GUESS WHAT THE ANSWER
14 MIGHT HAVE BEEN.

15 SOMETIMES I MAY ORDER THAT EVIDENCE BE STRICKEN FROM THE
16 RECORD AND THAT YOU DISREGARD OR IGNORE THE EVIDENCE. THAT
17 MEANS THAT WHEN YOU ARE DECIDING THE CASE, YOU MUST NOT
18 CONSIDER THE EVIDENCE THAT I TOLD YOU TO DISREGARD.

19 IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE
20 WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE.

21 YOU MAY BELIEVE EVERYTHING A WITNESS SAYS OR PART OF IT OR
22 NONE OF IT.

23 IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE
24 INTO ACCOUNT:

25 1. THE OPPORTUNITY AND ABILITY OF THE WITNESS TO SEE OR

1 HEAR OR KNOW THE THINGS TESTIFIED TO;

2 2. THE WITNESS'S MEMORY;

3 3. THE WITNESS'S MANNER WHILE TESTIFYING;

4 4. THE WITNESS'S INTEREST IN THE OUTCOME OF THE CASE AND

5 ANY BIAS OR PREJUDICE;

6 5. WHETHER OTHER EVIDENCE CONTRADICTED THE WITNESS'S

7 TESTIMONY;

8 6. THE REASONABLENESS OF THE WITNESS'S TESTIMONY IN LIGHT

9 OF ALL OF THE OTHER EVIDENCE; AND,

10 7. ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.

11 PROOF OF A FACT DOES NOT NECESSARY DEPEND ON THE NUMBER OF

12 WITNESSES WHO TESTIFY ABOUT IT.

13 THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT

14 NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY ABOUT

15 IT.

16 I'LL NOW SAY A FEW WORDS ABOUT YOUR CONDUCT AS JURORS.

17 FIRST, KEEP AN OPEN MIND THROUGHOUT THE TRIAL AND DO NOT

18 DECIDE WHAT THE VERDICT SHOULD BE UNTIL YOU AND YOUR FELLOW

19 JURORS HAVE COMPLETED YOUR DELIBERATIONS AT THE END OF THE

20 CASE.

21 SECOND, BECAUSE YOU MUST DECIDE THE CASE BASED ONLY ON THE

22 EVIDENCE RECEIVED IN THE CASE AND ON MY INSTRUCTIONS AS TO THE

23 LAW THAT APPLIES, YOU MUST NOT BE EXPOSED TO ANY OTHER

24 INFORMATION ABOUT THE CASE OR TO THE ISSUES THAT IT INVOLVES

25 DURING THE COURSE OF YOUR JURY DUTY.

1 THUS, UNTIL THE END OF THE CASE, OR UNLESS I TELL YOU
2 OTHERWISE, DO NOT COMMUNICATE WITH ANYONE IN ANY WAY AND DO NOT
3 LET ANYONE COMMUNICATE WITH YOU IN ANY WAY ABOUT THE MERITS OF
4 THE CASE OR ANYTHING TO DO WITH IT.

5 THIS INCLUDES DISCUSSING THE CASE IN PERSON, IN WRITING,
6 BY PHONE, BY ELECTRONIC MEANS, VIA E-MAIL, TEXT MESSAGING, OR
7 ANY INTERNET CHAT ROOM, BLOG, WEBSITE OR OTHER FEATURE.

8 THIS APPLIES TO COMMUNICATIONS WITH YOUR FELLOW JURORS
9 UNTIL I GIVE YOU THE CASE FOR DELIBERATION, AND IT APPLIES TO
10 COMMUNICATING WITH EVERYONE ELSE, INCLUDING YOUR FAMILY
11 MEMBERS, YOUR EMPLOYER, THE MEDIA OR PRESS, OR THE PEOPLE
12 INVOLVED IN THE TRIAL, ALTHOUGH YOU MAY NOTIFY YOUR FAMILY AND
13 YOUR EMPLOYER THAT YOU HAVE BEEN SEATED AS A JUROR IN THIS
14 CASE.

15 BUT IF YOU ARE ASKED OR APPROACHED IN ANY WAY ABOUT YOUR
16 JURY SERVICE OR ABOUT ANYTHING TO DO WITH IT, OR ANYTHING ABOUT
17 THE CASE, YOU MUST RESPOND THAT YOU HAVE BEEN ORDERED NOT TO
18 DISCUSS THE MATTER AND REPORT THE CONTACT TO ME.

19 BECAUSE YOU WILL RECEIVE ALL OF THE EVIDENCE AND LEGAL
20 INSTRUCTIONS YOU PROPERLY MAY CONSIDER TO RETURN A VERDICT, DO
21 NOT READ, WATCH, OR LISTEN TO ANY NEWS OR MEDIA ACCOUNTS OR
22 COMMENTARY ABOUT THE CASE OR ANYTHING TO DO WITH IT.

23 DO NOT DO ANY RESEARCH, SUCH AS CONSULTING DICTIONARIES,
24 SEARCHING THE INTERNET OR USING OTHER REFERENCE MATERIALS, AND
25 DO NOT MAKE ANY INVESTIGATION OR IN ANY OTHER WAY TRY TO LEARN

1 ABOUT THE CASE ON YOUR OWN.

2 THE LAW REQUIRES THESE RESTRICTIONS TO ENSURE THE PARTIES
3 HAVE A FAIR TRIAL ON THE SAME EVIDENCE THAT EACH PARTY HAS HAD
4 AN OPPORTUNITY TO ADDRESS. A JUROR WHO VIOLATES THESE
5 RESTRICTIONS JEOPARDIZES THE FAIRNESS OF THE PROCEEDINGS.

6 IF ANY JUROR IS EXPOSED TO ANY OUTSIDE INFORMATION, PLEASE
7 NOTIFY THE COURT IMMEDIATELY.

8 DURING DELIBERATIONS, YOU WILL HAVE TO MAKE YOUR DECISION
9 BASED ON WHAT YOU RECALL OF THE EVIDENCE. YOU WILL NOT HAVE A
10 TRANSCRIPT OF THE TRIAL. I URGE YOU TO PAY CLOSE ATTENTION TO
11 THE TESTIMONY AS IT IS GIVEN.

12 IF AT ANY TIME YOU CANNOT HEAR OR SEE THE TESTIMONY, THE
13 EVIDENCE, QUESTIONS OR ARGUMENTS, LET ME KNOW SO THAT I CAN
14 CORRECT THE PROBLEM.

15 IF YOU WISH, YOU MAY TAKE NOTES TO HELP YOU REMEMBER THE
16 EVIDENCE. IF YOU DO TAKE NOTES, PLEASE KEEP THEM TO YOURSELF
17 UNTIL YOU AND YOUR FELLOW JURORS GO TO THE JURY ROOM TO DECIDE
18 THE CASE.

19 DO NOT LET NOTE-TAKING DISTRACT YOU.

20 WHEN YOU LEAVE, YOUR NOTES SHOULD BE LEFT IN THE JURY ROOM
21 OR IN THE COURTROOM DURING BREAKS WHILE WE'RE IN SESSION.

22 AT THE CLOSE OF THE DAY I'D LIKE YOU TO TAKE THE NOTES TO
23 THE JURY ROOM.

24 NO ONE WILL READ YOUR NOTES. THEY WILL BE DESTROYED AT
25 THE CONCLUSION OF THE CASE IF YOU WISH.

1 WHETHER OR NOT YOU TAKE NOTES, YOU SHOULD RELY ON YOUR OWN
2 MEMORY OF THE EVIDENCE. NOTES ARE ONLY TO ASSIST YOUR MEMORY.

3 LANGUAGES OTHER THAN ENGLISH MAY BE USED DURING THE TRIAL.
4 THE EVIDENCE TO BE CONSIDERED BY YOU IS ONLY THAT PROVIDED
5 THROUGH THE OFFICIAL COURT INTERPRETERS.

6 ALTHOUGH SOME OF YOU MAY KNOW SPANISH OR VIETNAMESE, IT IS
7 IMPORTANT THAT ALL JURORS CONSIDER THE SAME EVIDENCE.
8 THEREFORE, YOU MUST ACCEPT THE ENGLISH INTERPRETATION AND
9 DISREGARD ANY DIFFERENT MEANING.

10 YOU MAY NOT MAKE ANY ASSUMPTION ABOUT A WITNESS OR A PARTY
11 BASED SOLELY UPON THE USE OF AN INTERPRETER TO ASSIST THAT
12 WITNESS OR PARTY.

13 FROM TIME TO TIME DURING THE TRIAL IT MAY BECOME NECESSARY
14 FOR ME TO TALK WITH THE ATTORNEYS OUT OF THE HEARING OF THE
15 JURY, EITHER BY HAVING A CONFERENCE AT THE BENCH WHEN THE JURY
16 IS PRESENT OR BY CALLING A RECESS.

17 PLEASE UNDERSTAND THAT WHILE YOU ARE WAITING, WE ARE
18 WORKING. THE PURPOSE OF THESE CONFERENCES IS NOT TO KEEP
19 RELEVANT INFORMATION FROM YOU, BUT TO DECIDE HOW CERTAIN
20 EVIDENCE IS TO BE TREATED UNDER THE RULES OF EVIDENCE AND TO
21 AVOID CONFUSION OR ERROR.

22 OF COURSE, WE WILL DO WHAT WE CAN TO KEEP THE NUMBER AND
23 LENGTH OF THESE CONFERENCES TO A MINIMUM.

24 I MAY NOT ALWAYS GRANT AN ATTORNEY'S REQUEST FOR A
25 CONFERENCE. DO NOT CONSIDER MY GRANTING OR DENYING A REQUEST

1 FOR A CONFERENCE AS ANY INDICATION OF MY OPINION OF THE CASE OR
2 WHAT YOUR VERDICT SHOULD BE.

3 TRIALS PROCEED IN THE FOLLOWING WAY:

4 FIRST, EACH SIDE MAY MAKE AN OPENING STATEMENT. AN
5 OPENING STATEMENT IS NOT EVIDENCE. IT IS SIMPLY AN OUTLINE TO
6 HELP YOU UNDERSTAND WHAT THAT PARTY EXPECTS THE EVIDENCE WILL
7 SHOW. A PARTY IS NOT REQUIRED TO MAKE AN OPENING STATEMENT.

8 THE PLAINTIFF WILL THEN PRESENT EVIDENCE AND COUNSEL FOR
9 THE DEFENDANT MAY CROSS-EXAMINE.

10 THEN THE DEFENDANT MAY PRESENT EVIDENCE AND COUNSEL FOR
11 THE PLAINTIFF MAY CROSS-EXAMINE.

12 AFTER THE EVIDENCE HAS BEEN PRESENTED, I WILL INSTRUCT YOU
13 ON THE LAW THAT APPLIES TO THE CASE AND THE ATTORNEYS WILL MAKE
14 CLOSING ARGUMENTS.

15 AFTER THAT, YOU WILL GO TO THE JURY ROOM TO DELIBERATE ON
16 YOUR VERDICT.

17 MS. NGUYEN, DID YOU WISH TO MAKE AN OPENING STATEMENT?

18 MS. NGUYEN: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT. YOU MAY PROCEED.

20 **(COUNSEL FOR PLAINTIFF GAVE HER OPENING STATEMENT.)**

21 MS. NGUYEN: GOOD MORNING, LADIES AND GENTLEMEN.
22 THANK YOU VERY MUCH FOR BEING HERE BRIGHT AND EARLY THIS
23 MORNING.

24 I'D LIKE TO INTRODUCE YOU TO SOMEONE WHO WAS NOT HERE
25 YESTERDAY. THIS IS ANDRE THOMAS. HE'S A PARALEGAL FROM OUR

1 OFFICE AND HE WILL BE HERE ASSISTING ME WITH THE TRIAL.

2 AS HIS HONOR SAID, THIS OPENING STATEMENT IS REALLY JUST
3 AN OUTLINE OF THE CASE SO I WON'T SPEND TOO MUCH TIME AND I
4 WON'T GO INTO A LOT OF DETAILS. THE EVIDENCE WILL BE PRESENTED
5 TO YOU THROUGHOUT THE TRIAL.

6 YOU MIGHT BE THINKING RIGHT NOW, WHY DID MY CLIENT,
7 CUC DANG, GET FIRED? WHAT WAS THE REASON THAT GOT HER
8 TERMINATED FROM BAY 101?

9 YOU'RE GOING TO HEAR FROM BAY 101 LATER. MR. RON WERNER,
10 HE WAS THE ONE WHO MADE THE DECISION TO FIRE MS. DANG.

11 MR. WERNER IS GOING TO TELL YOU THAT HE FIRED MS. DANG
12 BECAUSE SHE REFUSED TO STAY AFTER WORK TO ATTEND A MEETING IN
13 H.R. HE CONSIDERED THAT JOB ABANDONMENT.

14 YOU'LL HEAR FROM MS. DANG THAT SHE DIDN'T ABANDON HER JOB.

15 WHAT HAPPENED WAS THAT THEY GAVE HER THREE HOUR'S NOTICE
16 OF THE MEETING IN H.R. SHE WAS SUPPOSED TO HAVE STAYED AFTER
17 HER SHIFT WAS OVER ON WHAT WAS ESSENTIALLY HER DAY OFF, AND
18 THEY WANTED HER TO STAY WITHOUT LETTING HER KNOW WHAT THE
19 MEETING WAS GOING TO BE ABOUT, HOW LONG THE MEETING WAS GOING
20 TO LAST. THEY HAD NO INTERPRETER THERE FOR HER AND NO UNION
21 REP.

22 SHE TOLD THEM THAT SHE COULDN'T STAY BECAUSE SHE HAD
23 FAMILY OBLIGATIONS. SHE HAD TO GO TO A BUS DEPOT TO PICK UP
24 HER DAUGHTER. SHE HAD TO DRIVE BACK TO SAN FRANCISCO TO HELP
25 HER HUSBAND BE TAKEN TO KAISER FOR SURGERY THAT DAY.

1 SO SHE ASKED THAT THE MEETING BE RESCHEDULED. SO WHEN SHE
2 LEFT, SHE ASKED THAT THE MEETING BE RESCHEDULED.

3 INSTEAD OF RESCHEDULING THE MEETING, HOWEVER, SHE WAS
4 FIRED.

5 BUT THIS STORY DIDN'T START ON THE DAY THAT SHE WAS FIRED.
6 IT DIDN'T START ON DECEMBER 21ST, 2009. IT ACTUALLY STARTED
7 BACK IN 2006 WHEN SHE FIRST STARTED WORKING AT BAY 101.

8 MS. DANG WAS HIRED AT BAY 101 TO WORK AS A COOK IN THE
9 KITCHEN IN 2006. SHE WORKED UNDER CONDITIONS THAT DIDN'T ALLOW
10 HER TO TAKE ALL OF THE REST BREAKS AND THE LUNCH BREAKS THAT
11 SHE WAS ENTITLED TO.

12 SHE HAD COMPLAINED TO HER SUPERVISORS, BUT NOTHING
13 CHANGED.

14 WHAT WAS WORSE, HOWEVER, WAS THAT SHE WAS HARASSED BY A
15 COWORKER BY THE NAME OF LUCIO SUAREZ. HE ASKED HER OUT ON
16 DATES. HE BROUGHT HER FLOWERS. HE WOULD CALL HER ON HER PHONE
17 REPEATEDLY.

18 WHEN SHE RESISTED HIS ADVANCES, HE GOT MAD AT HER. HE
19 LEFT NASTY MESSAGES ON HER CELL PHONE, AND HE EVEN INJURED HER
20 PHYSICALLY.

21 SHE COMPLAINED TO HER SUPERVISORS. THE HARASSMENT CEASED
22 FOR A SHORT TIME, BUT IT PICKED UP AGAIN.

23 WHEN THE HARASSMENT CULMINATED IN HER BEING PHYSICALLY
24 INJURED, THAT'S WHEN SHE FELT LIKE SHE HAD TO WRITE A LETTER TO
25 BAY 101'S H.R. TO COMPLAIN. SHE HAD TO GO GET SOME HELP TO

1 WRITE THAT FORMAL LETTER BECAUSE SHE DIDN'T SPEAK ENGLISH VERY
2 WELL, AND AS A RESULT OF THAT COMPLAINT, BAY 101 TRANSFERRED
3 HER TO A DIFFERENT SHIFT SO SHE DIDN'T HAVE TO WORK IN THE SAME
4 SHIFT AS THE PERSON WHO HARASSED HER.

5 BUT SHE WILL TESTIFY THAT SHE WAS STILL WORKING IN THE
6 KITCHEN AND SHE WAS VERY UNCOMFORTABLE WHEN THEIR SHIFTS
7 OVERLAPPED AND SHE WAS STILL HAVING TO WORK WITH THE MAN WHO
8 SEXUALLY HARASSED HER.

9 MS. DANG WILL ALSO TELL YOU THAT AFTER SHE MADE THIS
10 COMPLAINT ABOUT SEXUAL HARASSMENT, EVEN THOUGH THEY TRANSFERRED
11 HER TO A DIFFERENT SHIFT, HER SUPERVISORS BEGAN RETALIATING
12 AGAINST HER.

13 THEY GAVE HER HARDER TASKS. THEY PICKED ON HER. THEY
14 CHANGED HER SCHEDULES AT THE LAST MINUTE. THEY LOST DOCTOR'S
15 NOTES AND ACCUSED HER OF NOT BRINGING IN DOCTOR'S EXCUSES.

16 THEY ENFORCED RULES AGAINST HER THAT THEY DIDN'T ENFORCE
17 AGAINST OTHER EMPLOYEES.

18 MS. DANG WILL TELL YOU THAT SHE IS A SINGLE MOM. AT THE
19 TIME SHE WAS CARING FOR NOT ONLY HERSELF, BUT HER YOUNGER
20 DAUGHTER WHO WAS LIVING AT HOME.

21 SO SHE WAS AFRAID OF LOSING HER JOB. SHE KNEW THAT THEY
22 WERE RETALIATING AGAINST HER, BUT SHE KNEW THAT SHE HAD TO DO
23 WHATEVER SHE COULD TO KEEP HER JOB.

24 AFTER A WHILE, HOWEVER, THAT HOSTILE ENVIRONMENT STARTED
25 TO WEAR HER DOWN. SHE STARTED TO LOOK FOR WAYS TO GET OUT OF

1 IT.

2 SHE PUT IN A TRANSFER TO GO AND WORK AS A SERVER ON THE
3 FLOOR THINKING THAT IF SHE GETS AWAY FROM THE CONFINES OF THE
4 KITCHEN, THAT SHE WOULD BE LESS SUBJECT TO THE RETALIATION
5 INSIDE OF THE KITCHEN BY HER SUPERVISORS.

6 EVEN HER REQUEST FOR A TRANSFER WAS RESISTED AND SHE HAD
7 TO FIGHT FOR IT.

8 AFTER THEY GAVE HER THE TRANSFER TO BECOME A SERVER, THE
9 DIFFICULT ENVIRONMENT DID NOT STOP. THE RETALIATION CONTINUED.

10 HER BOSS WAS SETTING HER UP TO FAIL AND TO GIVE THEM A
11 REASON TO FIRE HER.

12 NOW, IN OCTOBER 2009, HER SUPERVISOR, A MAN BY THE NAME OF
13 NICK ORTEGA, AND THE H.R. MANAGER, A WOMAN BY THE NAME OF
14 JENNIFER GILBERT, SUSPENDED HER.

15 THEY ACCUSED HER OF ARGUING WITH A COWORKER.

16 MS. DANG FELT THAT THAT ACCUSATION AND THAT SUSPENSION WAS
17 VERY UNFAIR, THAT IT WAS JUST ANOTHER WAY THAT HER SUPERVISORS
18 WERE RETALIATING AGAINST HER FOR MAKING THE COMPLAINT AND FOR
19 FORCING THEM TO DEAL WITH HER SEXUAL HARASSMENT.

20 SO AT THE TIME SHE HAD HER THEN FIANCÉ, NOW HUSBAND,
21 JASON SUMMERS, HELP HER TO WRITE LETTERS TO THE OWNERS AT
22 BAY 101 AND MR. RON WERNER TO COMPLAIN ABOUT THE TREATMENTS SHE
23 WAS GETTING FROM HER SUPERVISORS AND FROM H.R.

24 AS A RESULT OF THAT LETTER, MR. WERNER ASKED HIS ATTORNEY
25 TO ORDER AN INDEPENDENT INVESTIGATION INTO THE CASE.

1 THAT INVESTIGATION WAS SUPPOSED TO HAVE BEEN BY A NEUTRAL
2 PERSON. IT WAS SUPPOSED TO HAVE BEEN CONFIDENTIAL.

3 BUT YOU'LL HEAR, AS PART OF THIS CASE, THAT THE
4 INVESTIGATION WAS NOT NEUTRAL AND IT WAS NOT CONFIDENTIAL.

5 AND WHEN THE INVESTIGATION REPORT CAME IN, MR. WERNER WAS
6 THE ONLY ONE AT BAY 101 WHO REVIEWED THAT INVESTIGATION REPORT.

7 AFTER HE READ IT, HE WANTED MR. ORTEGA AND MS. GILBERT TO
8 BE THE ONE TO MEET WITH MS. DANG TO TELL HER ABOUT THE RESULT
9 OF THE INVESTIGATION, THE RESULT OF THE INVESTIGATION INTO HER
10 COMPLAINT AGAINST THEM.

11 AND IN ADDITION TO TELLING HER ABOUT THE RESULTS OF THE
12 INVESTIGATION, BAY 101 WAS GOING TO PUT MS. DANG ON A TWO-WEEK
13 PERFORMANCE IMPROVEMENT PLAN.

14 SO THIS IS THE MEETING THAT THEY WANTED TO SCHEDULE WITH
15 MS. DANG ON DECEMBER 21ST, 2009. THIS IS THE MEETING THAT THEY
16 SPRUNG ON HER THREE HOURS BEFORE SHE WAS SUPPOSED TO HAVE
17 STARTED HER WEEKEND, BECAUSE HER WEEK ENDED ON MONDAY MORNING.
18 SHE USUALLY HAS MONDAY OFF AND TUESDAY OFF.

19 AND WHEN SHE TOLD THEM THAT SHE COULDN'T STAY BECAUSE SHE
20 HAD FAMILY OBLIGATIONS, NO ONE TOLD HER THAT THERE WOULD BE
21 CONSEQUENCES TO HER NOT STAYING.

22 HER SUPERVISOR, NICK ORTEGA, EVEN LET HER GO EARLY THAT
23 MORNING.

24 IT WAS ONLY AFTER MR. WERNER FOUND OUT THAT SHE DID NOT
25 COME TO THE MEETING, HE IMMEDIATELY DECIDED TO FIRE HER. HIS

1 REASON FOR FIRING HER WAS JOB ABANDONMENT. HE NEVER ASKED WHY
2 SHE COULDN'T STAY FOR THE MEETING. HE NEVER ASKED WHETHER THE
3 MEETING COULD BE RESCHEDULED OR WHETHER SHE COULD COME BACK
4 SOME OTHER TIME FOR THE MEETING.

5 AT THAT TIME MR. WERNER WAS THE ONLY ONE FROM BAY 101 WHO
6 HAD REVIEWED THE INVESTIGATION REPORT. HE WAS THE ONLY ONE AT
7 BAY 101 WHO KNEW THE KIND OF TROUBLE THAT MS. DANG HAD CAUSED
8 TO BAY 101 BECAUSE OF HER COMPLAINTS.

9 WHEN MR. WERNER WANTED TO FIRE HER, HE JUST INSTRUCTED
10 JENNIFER GILBERT, THE H.R. MANAGER, TO SEND THE PAPERS TO
11 MS. DANG AT HER HOME.

12 WHEN MS. DANG LEFT THAT MORNING AFTER HER SHIFT ENDED, SHE
13 DIDN'T KNOW SHE HAD BEEN FIRED. NO ONE BOTHERED TO CALL HER TO
14 LET HER KNOW THAT SHE HAD BEEN FIRED.

15 SHE ACTUALLY DID NOT FIND OUT THAT SHE HAD BEEN FIRED
16 UNTIL SHE CAME BACK TO BAY 101 BECAUSE A COWORKER HAD CALLED
17 HER TO SAY, "HEY, THEY JUST PASSED OUT THE CHRISTMAS BONUS
18 CHECK. WHY DON'T YOU COME IN AND GET IT?"

19 IT WAS WHEN SHE CAME TO GET HER CHRISTMAS BONUS CHECK THAT
20 SHE WAS TOLD, "THERE IS NO CHRISTMAS BONUS CHECK FOR YOU. YOU
21 HAVE BEEN FIRED."

22 SHE HAD NO IDEA WHY SHE HAD BEEN FIRED UNTIL SHE WENT HOME
23 TO SAN FRANCISCO AND RECEIVED THE FEDEX PACKAGE IN THE MAIL
24 THAT TOLD HER THAT SHE HAD BEEN FIRED FOR JOB ABANDONMENT.

25 WE EXPECT BAY 101 TO ARGUE THAT IT DIDN'T KNOW OF

1 MS. DANG'S DIFFICULTIES BECAUSE SHE NEVER COMPLAINED, AND THAT
2 AS SOON AS IT FOUND OUT, IT TOOK PROMPT ACTION TO CORRECT THE
3 PROBLEMS.

4 BAY 101 WILL TELL YOU THAT MS. DANG WAS FIRED ONLY BECAUSE
5 SHE COULDN'T STAY FOR THE MEETING.

6 YOU'RE GOING TO HEAR TESTIMONY FROM THE PLAINTIFF'S EXPERT
7 IN MANAGEMENT PRACTICES, MS. JAN DUFFY. IT IS MS. DUFFY'S
8 OPINION THAT BAY 101 NOT ONLY VIOLATED ITS OWN POLICIES, BUT
9 ALSO VIOLATED THE REASONABLE AND USUAL MANAGEMENT PRACTICES FOR
10 AN EMPLOYER LIKE BAY 101.

11 LADIES AND GENTLEMEN, WHAT HAPPENED TO MS. DANG ON
12 DECEMBER 21ST, 2009, WAS JUST THE LAST STRAW, THE LAST STRAW
13 THAT BROKE THE CAMEL'S BACK.

14 LIKE A CAMEL, MS. DANG HAD TRIED TO CARRY THE HEAVY LOADS
15 THAT LIFE HAD PUT ON HER. SHE WAS A SINGLE MOM TAKING CARE OF
16 HERSELF AND HER YOUNG DAUGHTER AND EARNING A LIVING MAKING LOW
17 WAGES.

18 ON TOP OF ALL OF THAT, SHE WAS TRYING HER BEST TO ENDURE
19 THE RETALIATION AND HARASSMENT THAT HER BOSS IMPOSED ON HER
20 BECAUSE OF THE COMPLAINTS THAT SHE HAD MADE BEFORE. SHE JUST
21 COULD NOT AFFORD TO LOSE THE JOB.

22 YET EVEN A STRONG CAMEL HAS A BREAKING POINT.

23 AND YOU WILL HEAR FROM MS. DANG HERSELF AND FROM HER
24 HUSBAND HOW THE WAY THAT BAY 101 FIRED HER BROKE HER. IT MADE
25 HER ANGRY. IT MADE HER DESPONDENT. IT MADE HER HUMILIATED AND

1 LOSE FACE WITH FAMILY, COWORKERS AND FRIENDS. IT TOOK AWAY HER
2 PRIDE, PRIDE THAT SHE ALWAYS HAD TO HOLD DONE DOWN A JOB, TO BE
3 INDEPENDENT AND TAKE CARE OF HERSELF AND HER DAUGHTER.

4 YOU'LL HEAR THAT IT CAUSED HER TO SPIRAL INTO A DEEP
5 DEPRESSION, AND HER SEVERE EMOTIONAL DISTRESS MADE IT HARDER
6 FOR HER TO GO LOOK FOR A NEW JOB.

7 AS OF TODAY, MS. DANG HAS NOT COMPLETELY RECOVERED FROM
8 WHAT HAPPENED TO HER AT BAY 101'S HANDS.

9 BUT SHE HAS IMPROVED. SHE'S IMPROVED ENOUGH TO BE ABLE TO
10 WORK AGAIN AND TO EARN A LIVING. SHE'S IMPROVED ENOUGH TO BE
11 HERE TODAY TO TELL YOU, A JURY OF HER PEERS, HER STORY.

12 LADIES AND GENTLEMEN, WE'RE HERE NOW FINALLY, AFTER
13 THREE YEARS SINCE THAT FATEFUL DAY THAT BAY 101 FIRED HER, FOR
14 MS. DANG TO HAVE A CHANCE TO PRESENT HER SIDE OF THE STORY TO
15 YOU.

16 WE THANK YOU FOR YOUR ATTENTION AND YOUR PATIENCE AS WE
17 BRING YOU THE EVIDENCE IN THIS CASE.

18 THANK YOU, YOUR HONOR.

19 THE COURT: MR. McMANIS, DO YOU WISH TO MAKE AN
20 OPENING STATEMENT?

21 MR. McMANIS: I DO, YOUR HONOR. THANK YOU VERY
22 MUCH.

23 **(COUNSEL FOR DEFENDANT GAVE HIS OPENING STATEMENT.)**

24 MR. McMANIS: GOOD MORNING.

25 JUROR: GOOD MORNING.

1 MR. MCMANIS: I'M GLAD THAT THE JUDGE GAVE THOSE
2 PRELIMINARY INSTRUCTIONS AND EMPHASIZED THAT WHAT THE LAWYERS
3 SAY IS NOT THE EVIDENCE. IT'S WHAT THE LAWYERS ARE
4 INTERPRETING OR ARGUING.

5 WE'RE TALKING ABOUT EVENTS THAT OCCURRED NOW SOME SIX OR
6 SEVEN YEARS AGO. YOU'RE GOING TO HEAR WITNESSES ABOUT THIS
7 CASE. YOU'RE GOING TO SEE SOME EXHIBITS AND, OF COURSE, THAT'S
8 THE MATERIAL ON WHICH YOU HAVE TO BASE YOUR VERDICT.

9 I HAVE THE PRIVILEGE OF ADDRESSING YOU ABOUT THE CASE AND
10 TELLING YOU OUR SIDE OF THE STORY AND THAT'S WHAT I'M GOING TO
11 DO.

12 AND I'M GOING TO TAKE A LITTLE MORE TIME THAN MY
13 COLLEAGUE, MY FRIEND DID HERE BECAUSE I THINK IT'S IMPORTANT TO
14 SET THE STAGE FOR THE CASE BECAUSE IT'S NOT THIS SIMPLE ACCOUNT
15 OF A POOR PERSON WHO HAS BEEN VICTIMIZED BY SEXUAL HARASSMENT
16 AND DISCRIMINATED AGAINST AND WHAT HAVE YOU.

17 I THINK YOU'RE GOING TO SEE THAT IT'S A LITTLE MORE
18 COMPLICATED THAN THAT.

19 AND WHAT WE HAVE HERE IS A PERSON THAT HAD A REAL
20 DIFFICULT TIME DOING HER JOB AND HAD A DIFFICULT TIME WITH HER
21 COWORKERS, WITH THE CUSTOMERS, CAUSED QUITE A FEW PROBLEMS FOR
22 BAY 101 AND THAT BAY 101 WAS VERY TOLERANT FOR MANY YEARS UNTIL
23 FINALLY, TO USE MY FRIEND'S ANALOGY, IT WAS KIND OF THE LAST
24 STRAW.

25 I WANT TO TALK A LITTLE BIT FIRST OF ALL ABOUT BAY 101.

1 SOME OF YOU MIGHT NOT BE FAMILIAR WITH IT.

2 BAY 101 IS A CARD ROOM, SOMETIMES CALLED A CASINO. IT'S
3 ONE OF TWO LICENSED CARD ROOMS IN THE CITY OF SAN JOSE.

4 CAN YOU PUT UP THE PICTURE OF THE CLUB THERE.

5 THIS IS A PICTURE OF THE EXTERIOR OF BAY 101. IT'S, I
6 THINK, A VERY ATTRACTIVE PLACE. IT PROVIDES A PLACE FOR PEOPLE
7 TO PLAY CARDS AND OVERSIGHT TO ENSURE THAT THE GAMES ARE FAIR
8 AND LEGAL.

9 UNLIKE LAS VEGAS CASINOS OR INDIAN CASINOS, PATRONS AT
10 BAY 101 DO NOT PLAY AGAINST THE HOUSE. THEY PLAY AGAINST EACH
11 OTHER AND ESSENTIALLY ARE -- RENT SEATS AT THE TABLE SO THAT
12 THEY CAN DO THAT.

13 CAN YOU PUT UP THE INSIDE SHOT THERE.

14 THESE ARE A COUPLE OF THE GAMING TABLES, CUSTOMERS PLAYING
15 CARDS.

16 AND AS MY FRIEND SAID, MS. DANG STARTED WORKING AT THE
17 CLUB AS A COOK AND LATER BECAME A SERVER INTERACTING WITH THE
18 CUSTOMERS ON THE FLOOR.

19 NOW, BAY 101 OPERATES 24 HOURS A DAY, 7 DAYS A WEEK. IT'S
20 OPEN ALWAYS. IT EMPLOYS ABOUT 700 PEOPLE WHO WORK IN THREE
21 SHIFTS TO PROVIDE 24-HOUR COVERAGE.

22 ASIAN EMPLOYEES MAKE UP THE LARGEST GROUP OF EMPLOYEES AT
23 BAY 101, AND THE SUGGESTION THAT SOMEHOW RON WERNER OR THE
24 MANAGEMENT SINGLED OUT MS. DANG BECAUSE SHE WAS ASIAN OR
25 VIETNAMESE IS JUST ABSOLUTELY UNTRUE.

1 BAY 101 DOES NOT KEEP STATISTICS AS TO THE ETHNICITY OF
2 ITS EMPLOYEES, BUT YOU'RE GOING TO HEAR THAT THERE ARE MANY
3 VIETNAMESE EMPLOYEES, AND ALSO MANY VIETNAMESE CUSTOMERS WHO
4 COME TO ENJOY THE ATMOSPHERE PLAYING CARDS.

5 THE EMPLOYEES WHO WORK IN FOOD SERVICE, BOTH COOKS AND
6 SERVERS, ARE BOTH LARGELY ASIAN. THERE ARE APPROXIMATELY 28
7 COOKS, 27 SERVERS AND 28 PORTERS WHO WORK IN THE WORKPLACE.

8 NOW, BAY 101 HAS TWO SIDES TO ITS CARD ROOM FLOOR, A POKER
9 SIDE AND A CALIFORNIA SIDE. THE CALIFORNIA GAMES ARE SOMETIMES
10 CALLED ASIAN GAMES.

11 AND HERE YOU KIND OF HAVE A SCHEMATIC OF THE FLOOR PLAN.
12 TO THE RIGHT IS THE POKER GAMES, THE TRADITIONAL POKER, TEXAS
13 HOLD 'EM, THAT TYPED OF THING.

14 TO THE LEFT ARE WHAT THEY CALL CALIFORNIA GAMES OR ASIAN
15 GAMES.

16 AND AS YOU CAN SEE, THERE ARE FACILITIES, RESTROOMS, A
17 DELI AND WHAT HAVE YOU, THE KITCHEN IN THE BACKGROUND WHERE
18 MS. DANG STARTED OUT AS A COOK, AND THEN THERE ARE ALSO PLACES
19 FOR DRINKS AND WHAT HAVE YOU.

20 WHEN CUSTOMERS ARRIVE AT BAY 101, THEY ARE GREETED, THEY
21 ARE SEATED, THEY ARE SHOWN TO WHATEVER TABLE THEY WOULD LIKE
22 FOR WHATEVER GAME THEY WOULD LIKE TO PLAY.

23 EMPLOYEES PROVIDE FOOD AND DRINKS. OTHERS KEEP THE CLUB
24 CLEAN AND COMFORTABLE.

25 AND THERE'S A SURVEILLANCE DEPARTMENT, REQUIRED BY LAW,

1 THAT OPERATES 24/7 OF THE CLUB FLOOR.

2 SO ONE OF THE VERY IMPORTANT PIECES OF EVIDENCE THAT
3 YOU'RE GOING TO HEAR IN THIS CASE, OR SEE IN THIS CASE, IS THE
4 ACTUAL SURVEILLANCE TAPE OF WHAT HAPPENED THAT LED TO HER
5 DISCIPLINE AND, LATER, TERMINATION.

6 BECAUSE THE CITY OF SAN JOSE, TO BE SURE THE GAMES ARE
7 FAIR AND LEGAL, REQUIRES THAT ALL THE AREA BE VIDEOTAPED AND WE
8 WERE ABLE TO LOOK AT THE VIDEOTAPE AND VERIFY THE COMPLAINTS
9 THAT COWORKERS MADE ABOUT MS. DANG ON OCTOBER 4, 2009.

10 YOU ARE GOING TO HEAR, I BELIEVE, PLAINTIFF INTENDS TO
11 CALL MR. WERNER AS THEIR FIRST WITNESS AND THAT'S GOOD AND YOU
12 WILL GET TO HEAR WHAT HE HAS TO SAY ON THIS SUBJECT.

13 I'D LIKE TO GO RIGHT TO THE INCIDENT THAT LED TO THE
14 INVESTIGATION AND SUBSEQUENT TERMINATION OF MS. DANG.

15 AND CAN YOU PUT UP THAT STILL SHOT, PLEASE.

16 NOW, THIS IS AN ACTUAL FRAME FROM THE SURVEILLANCE CAMERA.
17 AND THE INCIDENT IN QUESTION STARTED AT ABOUT TEN MINUTES
18 TO MIDNIGHT ON OCTOBER 4 AND WENT UNTIL ABOUT 12:40 A.M.,
19 50 MINUTES LATER ON OCTOBER 5TH.

20 AND THE CUSTOMER INVOLVED IN THIS WAS THIS GENTLEMAN
21 SITTING RIGHT HERE AT THIS TABLE (INDICATING).

22 AND YOU'RE GOING TO SEE IN THE VIDEOTAPE AT SOME POINT
23 THAT MS. DANG COMES OUT TO GIVE A DRINK ORDER TO HIM, TAKE A
24 DRINK ORDER, SERVES HIM. SHE BROUGHT HIM THE WRONG DRINK.

25 HE GESTURED TO ANOTHER SERVER WHO YOU WILL SEE COME OVER

1 TO THE TABLE AND TOLD HER THAT SHE HAD -- MS. DANG HAD BROUGHT
2 HIM THE WRONG DRINK AND ASKED THE OTHER SERVER TO CORRECT THAT,
3 WHICH SHE DID.

4 AND WHEN MS. DANG SAW THIS, SHE BECAME ANGRY AND SHE
5 STARTED ARGUING WITH THE OTHER SERVER ABOUT THIS AND CLAIMED
6 THAT THE OTHER SERVER WAS TRYING TO STEAL HER TIP AND THAT
7 THERE WAS NOTHING WRONG WITH THIS AND CREATING QUITE A BIT OF
8 COMMOTION.

9 THE NEXT THING THAT HAPPENED WAS THAT SHE THEN WENT AND
10 CONFRONTED THE CUSTOMER AND TOLD THE CUSTOMER THAT I -- "THIS
11 IS THE DRINK THAT YOU WANTED" AND YOU'LL SEE HER POINTING TO
12 HER DRINK PAD.

13 THE COMMOTION BECAME SO RUCKUS THAT THIS PERSON RIGHT
14 HERE, ARLENE FONTILLAS, ANOTHER SERVER IN THE CLUB WHO WAS OFF
15 DUTY AND PLAYING CARDS AT THIS TABLE, LOOKED AROUND AND WANTED
16 TO KNOW WHAT IS THE PROBLEM HERE.

17 NOW, BASICALLY, AND FORTUNATELY, THIS RUCKUS GOT MOVED OFF
18 THE FLOOR AND WENT ON INTO THE KITCHEN.

19 IT'S BEEN SUGGESTED THAT BAY 101 DID NOTHING TO
20 INVESTIGATE THIS MATTER AND IT WAS SOME KIND OF A BRUSH OFF.
21 NOTHING COULD BE FURTHER FROM THE TRUTH.

22 BAY 101 OBTAINED STATEMENTS FROM THE TWO SERVERS WHO WERE
23 OUT ON THE FLOOR THAT EVENING, AND I WANT TO TALK ABOUT THOSE.

24 OCTOBER 4, 2009 -- YOU CAN PUT THAT BACK UP IF YOU WOULD,
25 CINDY.

1 OCTOBER 4, 2009, WAS WHEN THIS ALL STARTED.

2 AND THE NAME OF THE SERVER WHO TRIED TO ACCOMMODATE THE
3 CUSTOMER WHOSE DRINK HAD NOT BEEN BROUGHT CORRECTLY WAS
4 LINDA ELIAS.

5 ON OCTOBER 6TH SHE GAVE A STATEMENT TO BAY 101 STATING
6 WHAT HAD HAPPENED AS I DESCRIBED IT, THAT SHE WENT UP TO
7 MS. DANG TO TELL HER WHAT THE PROBLEM HAD BEEN; TOLD HER THAT
8 SHE COULD KEEP HER TIP; AND MS. DANG WAS VERY UPSET AT THIS
9 EXCHANGE, STARTING YELLING AT HER IN THE KITCHEN; WENT OUT TO
10 THE CUSTOMER AND CREATED A SCENE; TOLD THE CUSTOMER IT WAS HIS
11 FAULT; SHOWED THE CUSTOMER THE LIST OF DRINKS THAT SHE HAD
12 HANDWRITTEN.

13 MS. ELIAS, WHO GAVE THIS STATEMENT -- AND YOU'LL GET THIS
14 STATEMENT IN EVIDENCE -- APPROACHED MS. DANG AND TRIED TO CALM
15 HER DOWN AND THE CUSTOMER AS WELL.

16 SHE THEN TURNED AND BEGAN YELLING AT MS. ELIAS,
17 LINDA ELIAS, AND THIS CAUSED ARLENE FONTILLAS, AS I MENTIONED,
18 TO GET UP AND WONDER WHAT WAS GOING ON.

19 AGAIN, FROM THE STATEMENT, THE COOK THEN WENT TO THE
20 KITCHEN AND STARTED YELLING AT KEN, WHO WAS THE COOK. KEN TOLD
21 HER IF SHE DIDN'T QUIT YELLING HE WOULD SEND HER HOME, AND SO
22 FORTH AND SO ON.

23 AND THAT'S THE STATEMENT OF LINDA ELIAS, OCTOBER 26TH,
24 2009.

25 AND THEN THERE IS ALSO A HANDWRITTEN STATEMENT THAT THE

1 CLUB OBTAINED FROM ARLENE FONTILLAS, THE PERSON WHO TRIED TO
2 CALM PEOPLE DOWN OCTOBER 7, 2009, AND SHE ESSENTIALLY SAID THE
3 SAME THING.

4 AND THEN MR. KEN, THE CHEF IN THE KITCHEN, LET ME GIVE YOU
5 HIS ACCOUNT. HE HEARD MS. DANG COME INTO THE KITCHEN TALKING
6 LOUDLY AND CUSSING ABOUT AN ARGUMENT.

7 SHE KEPT SAYING -- AND FORGIVE ME FOR SAYING THIS, BUT
8 THIS IS THE REPORT THAT WE RECEIVED -- MS. DANG KEPT SAYING,
9 "THIS IS FUCKING BULLSHIT."

10 THE COOK TOLD HER TO CALM DOWN AND SHE KEPT YELLING, AND
11 SHE KEPT USING THE TERM "FUCKING BULLSHIT."

12 HE FINALLY SAID TO HER, "I CAN'T HAVE THIS ATTITUDE. NICK
13 IS GOING TO BE HERE IN THE MORNING. HE'S GOING TO HAVE TO SORT
14 THINGS OUT."

15 HE BASICALLY TOLD HER TO TAKE A WALK AND CALM DOWN.

16 NOW, THIS WAS NOT THE FIRST PROBLEM THAT MS. DANG HAD HAD
17 AT BAY 101 DOING HER JOB AS A SERVER.

18 WHEN SHE WANTED TO BE TRANSFERRED OUT OF THE KITCHEN TO
19 BECOME A SERVER, AS SOON AS THERE WAS AN OPENING, SHE WAS GIVEN
20 THAT OPPORTUNITY, AND THE SUGGESTION THAT SOMEHOW SHE WAS NOT
21 ALLOWED TO MOVE OUT TO BECOME A SERVER WHERE SHE COULD MAKE
22 MORE MONEY AND GET TIPS AND WHAT HAVE YOU IS ABSOLUTELY UNTRUE.
23 THERE WERE NO OPENINGS.

24 WHEN THERE WAS AN OPENING, SHE WAS GIVEN THAT TRANSFER.

25 AND SHE WAS, LIKE EVERY SERVER, HAD TO BE TRAINED BECAUSE

1 THIS IS A VERY --

2 CAN YOU PUT THAT PICTURE UP AGAIN, PLEASE.

3 AS YOU CAN SEE, THERE'S A LOT OF ACTION GOING ON ON THE
4 GAMING FLOOR. THERE ARE CUSTOMERS PLAYING CARDS, PEOPLE ARE
5 SERVING ALCOHOL, FOOD AND WHAT HAVE YOU, AND IT'S NOT AN EASY
6 JOB.

7 AND SO MS. DANG WAS ASSIGNED TO ANOTHER VIETNAMESE SERVER,
8 ELLIS NG, SPELLED N-G, TO BE TRAINED.

9 AND HERE'S WHAT MS. NG HAD TO SAY ON THE SUBJECT.

10 SHE'S TRAINED FOOD SERVERS OF ALL DIFFERENT NATIONALITIES.
11 SHE HAD A REALLY DIFFICULT TIME TRAINING MS. DANG AND MS. DANG
12 WAS NOT READY TO GO ON THE FLOOR AFTER TWO WEEKS OF TRAINING.

13 QUOTE, "MS. DANG PRETENDS SHE UNDERSTANDS WHEN SHE
14 DOESN'T. DOES NOT LISTEN TO THE TRAINER OR THE CUSTOMERS.
15 DOES NOT WRITE THINGS DOWN AS MS. NG SUGGESTED SO THAT SHE
16 COULD BRING QUESTIONS BEFORE MAKING MISTAKES. BROUGHT
17 CUSTOMERS THE WRONG ORDERS. QUIT TRYING TO LEARN THE BAR
18 DRINKS WHEN GIVEN THE CHANCE TO DO SO. DOESN'T GET ALONG WITH
19 HER COWORKERS. TOOK LONGER FOR MS. DANG TO LEARN THIS JOB THAN
20 ANYONE ELSE THAT ELLIS NG HAD EVER TRAINED. OTHER FOOD SERVICE
21 HAD TRIED TO HELP MS. DANG. WHEN ASKED, SHE WASN'T INTERESTED
22 IN GETTING ANY HELP. SHE KNEW IT BETTER."

23 AND THEN THERE'S THE EXAMPLE OF ORDERING JACK DANIELS WITH
24 A MARGARITA WHEN SHE SHOULD HAVE KNOWN THAT WAS A TEQUILA
25 DRINK, ET CETERA, ET CETERA, ET CETERA.

1 NOW -- SO THE INCIDENT THAT OCCURRED WAS INVESTIGATED,
2 STATEMENTS WERE TAKEN, AND IT WAS DETERMINED THAT SHE SHOULD BE
3 SUSPENDED FOR TWO DAYS.

4 IN FACT, SHE WAS, FRANKLY, FORTUNATE THAT SHE WAS NOT
5 TERMINATED RIGHT THERE BECAUSE, AS YOU WILL SEE FROM THE
6 DISCIPLINARY PROCEDURE THAT BAY 101 FOLLOWS, IT'S GROUNDS FOR
7 DISCHARGE IF YOU HARASS, THREATEN, INTIMIDATE ANOTHER EMPLOYEE
8 OR CUSTOMER, AND THAT'S WHAT SHE WAS DOING TO BOTH IN THIS
9 PARTICULAR INSTANCE.

10 SHE WAS WRITTEN UP AND -- NOT ONLY FOR THIS INCIDENT
11 INVOLVING THE EMPLOYEE AND THE COWORKER AND THE COOK YELLING
12 AND CARRYING ON, BUT ALSO FOR A PROBLEM THAT SHE HAD HAD FOR
13 SOME TIME, AND THAT WAS BALANCING HER ENVELOPES.

14 NOW, A CARD CLUB IS BASICALLY A CASH BUSINESS. THERE'S A
15 LOT OF CASH THERE AND IT'S HIGHLY REGULATED.

16 THERE'S REGULATIONS AT THE FEDERAL LEVEL, STATE LEVEL, AND
17 THE CITY OF SAN JOSE FOR OBVIOUS REASONS.

18 AND SO IT'S VERY IMPORTANT TO BE METICULOUS IN ACCOUNTING
19 FOR CASH, AND EACH SERVER WHO IS DEALING WITH CASH HAS TO
20 FOLLOW THOSE RULES AND REGULATIONS.

21 WELL, SHE HAD A LOT OF PROBLEMS IN THIS REGARD. AND I'M
22 LOOKING AT A MEMORANDUM -- THIS, AGAIN, IS PART OF THE RECORD
23 THAT YOU'RE GOING TO RECEIVE -- FROM THE COMPLIANCE OFFICER,
24 THE PERSON WHO WAS CHARGED BY LAW TO BE SURE THAT BAY 101
25 COMPLIED WITH ALL OF THESE RULES AND REGULATIONS.

1 AND SHE WAS TALKING ABOUT MS. DANG'S DROP BAGS, THE DROP
2 BAGS BEING THE ENVELOPE WITH THE CASH RECEIPTS AND ACCOUNTING
3 FOR EVERYTHING AND THIS AND THAT --

4 BLESS YOU.

5 THE REPORTER: THANK YOU.

6 MR. McMANIS: THIS IS FROM THE COMPLIANCE OFFICER,
7 KATE KNAPP, TO NICK ORTEGA, MS. DANG'S SUPERVISOR, THE FOOD AND
8 BEVERAGE DIRECTOR. "THIS SERVER, CUC DANG, SEEMS TO HAVE A
9 PROBLEM WITH CLOSING."

10 THIS IS JUNE 8, 2009, SIX MONTHS BEFORE THIS INCIDENT, OR
11 FOUR MONTHS BEFORE THIS INCIDENT THAT WE LOOKED AT ON THE FLOOR
12 HERE.

13 "THIS SERVER, CUC DANG, SEEMS TO HAVE A PROBLEM WITH
14 CLOSING. THE SERVER DID NOT RESET ON HER 6-4-09 SHIFT. THIS
15 CAUSED A DOUBLE ENTRY TO THE FOOD AND BEVERAGE REPORT. ALSO
16 THERE ARE NO CURRENT SALES, RESET TAPES IN THE BAG. THE SERVER
17 DOES NOT PUT IN -- PUT THEM IN HER PAPERWORK, CAUSING A GREAT
18 DEAL OF WORK TO BALANCE THE REPORT. HOURS OF RESEARCH HAVE TO
19 BE DONE TO FIND THE CORRECT FIGURES. THIS SERVER HAS A PROBLEM
20 ON A REGULAR BASIS.

21 "THE RECOMMENDATION OF THE COMPLIANCE ANALYST IS THAT THE
22 SERVER BE MONITORED AT CLOSING AND A SUPERVISOR MUST BE
23 PRESENT."

24 WELL, THIS IS JUNE 8TH.

25 THERE'S ANOTHER ONE SEPTEMBER 14TH, AND THEN ANOTHER ONE,

1 NOVEMBER 5TH, AFTER THIS INCIDENT.

2 SO THESE WERE JUST PROBLEMS THAT SHE HAD.

3 NOW, AFTER SHE WAS SUSPENDED AND GIVEN A TWO DAY
4 SUSPENSION FOR THE ALTERCATION SHE HAD ON THE FLOOR, YOU'RE
5 GOING TO HEAR THAT SHE FILED A GRIEVANCE WITH THE UNION, WHICH
6 SHE IS ENTITLED TO UNDER THE COLLECTIVE BARGAINING AGREEMENT.

7 AND IT WAS SENT TO A MEDIATION, AND UNDER THE LAW I'M NOT
8 ENTITLED TO GET INTO THE DETAILS OF THE MEDIATION AND WHAT WAS
9 SAID AND WHAT HAVE YOU.

10 SUFFICE IT TO SAY, SHE WALKED OUT OF THE MEDIATION BEFORE
11 THE PROCESS WAS COMPLETE. SHE HAD ENOUGH OF WHAT WAS GOING ON
12 THERE AND SHE LEFT.

13 THEN WE HAVE THIS LETTER THAT SHE WROTE, AND IT IS --
14 APPARENTLY WE HEARD THIS MORNING HER HUSBAND WROTE, TALKING
15 ABOUT ALL OF THE COMPLAINTS THAT WE HAVE HEARD MY FRIEND
16 MENTION IN OPENING STATEMENT AND DEMANDING THAT THERE BE AN
17 INVESTIGATION AND WHAT HAVE YOU.

18 NOW, BAY 101 TAKES THESE THINGS VERY, VERY SERIOUSLY. AS
19 I SAID, IT'S A VERY HIGHLY REGULATED COMPANY. IT HAS A GOOD
20 REPUTATION. IT PROVIDES A SAFE PLACE TO PLAY CARDS.

21 AND WHEN IT GOT THIS LETTER, APPARENTLY AUTHORED BY HER
22 HUSBAND, IT WENT INTO ACTION TO DO AN INVESTIGATION.

23 AND RON WERNER, THE PERSON WHO WAS THE GENERAL MANAGER AT
24 THE TIME, CONTACTED MY PARTNER, SHARON KIRSCH, WHO WAS HIS
25 OUTSIDE COUNSEL AND SAID "WE HAVE GOT THIS COMPLAINT AND WE

1 NEED TO DO AN INVESTIGATION."

2 AND MS. KIRSCH WENT OUT AND GOT A NEUTRAL INVESTIGATOR, A
3 PERSON NAMED CAROLE EDMAN, WHO DID A COMPREHENSIVE
4 INVESTIGATION.

5 AND THE RESULT OF THIS WAS MS. EDMAN RETURNED IN DECEMBER,
6 TWO MONTHS LATER, WITH WHAT LOOKS TO ME TO BE LIKE 100-PLUS
7 PAGE REPORT. SHE INTERVIEWED 15 PEOPLE, INCLUDING MS. DANG AND
8 INCLUDING HER SUPERVISING, NICK ORTEGA, FOOD AND BEVERAGE
9 DIRECTOR, INCLUDING JENNIFER GILBERT, THE H.R. PERSON IN
10 CHARGE, AND VARIOUS OTHER SERVERS, COOKS, COMPLIANCE OFFICER
11 AND WHAT HAVE YOU.

12 AND BASICALLY CONCLUDED AT THE END OF THAT PROCESS THAT
13 MOST, IF NOT ALL, OF MS. DANG'S COMPLAINTS WERE UNFOUNDED.

14 NOW, THERE WERE A COUPLE OF THINGS THAT CAME OUT OF THE
15 INVESTIGATION THAT MS. EDMOND REPORTED TO MR. WARNER.

16 ONE, THERE WAS SOME TALK IN THE KITCHEN BETWEEN
17 MR. ORTEGA, WHO IS LATINO, AND A WOMAN NAMED MAMA ANH WHO IS A
18 VIETNAMESE COOK, WHERE THERE WAS SOME BANTER GOING BACK AND
19 FORTH AND ETHNIC JOKES BEING MADE. YOU KNOW, AND THEY DIDN'T
20 THINK THERE WAS ANY HARM IN THAT.

21 WELL, THAT'S NOT THE WAY YOU'RE SUPPOSED TO TALK THESE
22 DAYS IN THE KITCHEN, OR ANYWHERE ELSE, AND SO THAT WAS
23 SOMETHING THAT THE INVESTIGATOR SAID NEEDS TO BE CORRECTED.

24 THESE JOKES WERE NOT DIRECTED AT CUC DANG. THEY WERE JUST
25 BASICALLY BACK AND FORTH BETWEEN THESE TWO PEOPLE WHO ARE OLD

1 FRIENDS AND WORKED TOGETHER IN THE KITCHEN FOR A LONG TIME.

2 THEY WERE COUNSELLLED ON THAT AND TOLD THAT THEY SHOULD NOT
3 BE TALKING LIKE THAT, HOWEVER INNOCENT THEIR INTENT MIGHT BE.

4 SECONDLY, THE INVESTIGATOR RECOMMENDED TO BAY 101 THAT THE
5 POLICY REGARDING, OR THE PRACTICE REGARDING TRANSFERS NEEDED TO
6 BE CLARIFIED SO THAT THERE WAS NO CONFUSION ABOUT WHEN SOMEONE
7 WAS ELIGIBLE FOR A TRANSFER. THEY NEEDED TO BE POSTED. THEY
8 NEEDED TO BE HANDLED IN A MORE METHODICAL WAY. THIS WAS DONE.

9 AND THEN FINALLY IT WAS SUGGESTED THAT MS. DANG, WHO HAD
10 BEEN HAVING SO MANY OF THESE PROBLEMS, SHOULD BE GIVEN A
11 PERFORMANCE PROGRAM THAT WOULD HELP HER AGAIN TRY TO DO A
12 BETTER JOB.

13 NOW, I WANT TO TALK BRIEFLY ABOUT THIS INCIDENT INVOLVING
14 MR. LUCIO SUAREZ BACK IN APRIL 2007. THIS IS WHERE MS. DANG
15 MADE HER FIRST COMPLAINT THAT SHE WAS SEXUALLY HARASSED AND
16 THAT SHE'S ALLEGED THAT BAY 101 DIDN'T REALLY CARE OR DIDN'T DO
17 ANYTHING ABOUT IT OR WHAT HAVE YOU.

18 IT IS TRUE THAT IN APRIL 2007, AFTER SHE HAD BEEN WORKING
19 FOR ABOUT A YEAR, SHE MADE A COMPLAINT ABOUT LUCIO SUAREZ, A
20 LATINO COOK IN THE KITCHEN, AND CLAIMED THAT HE HAD BEEN
21 HARASSING HER AND WHAT HAVE YOU.

22 BAY 101 TOOK THAT VERY SERIOUSLY. HER SUPERVISOR,
23 NICK ORTEGA, AND JENNIFER GILBERT, THE HEAD OF H.R.,
24 INVESTIGATED IT. THEY TALKED TO MR. SUAREZ. THEY INTERVIEWED
25 MS. DANG.

1 AND IT TURNED OUT THE RESULT OF THE INVESTIGATION WAS THAT
2 THEY HAD HAD A CONSENSUAL DATING RELATIONSHIP, AS OCCASIONALLY
3 HAPPENS WITH COWORKERS, AND AT SOME POINT SHE WAS NOT
4 INTERESTED ANYMORE AND APPARENTLY HE DIDN'T GET THE MESSAGE AND
5 WAS PERSISTENT.

6 WHEN, AFTER THEIR INVESTIGATION, MS. GILBERT AND
7 MR. ORTEGA TOLD MR. SUAREZ IN NO UNCERTAIN TERMS, "YOU'RE NOT
8 TO BOTHER HER, YOU'RE NOT TO -- THERE'S NOT TO BE ANY FURTHER
9 PROBLEMS HERE AND STAY AWAY FROM HER." AND THEY SUSPENDED HIM
10 FOR TWO DAYS.

11 THEY THEN OFFERED MS. DANG A CHANGE IN SHIFT SO THAT SHE
12 WOULD NOT BE WORKING AT THE SAME TIME THAT MR. SUAREZ WAS.

13 SHE ACCEPTED THAT CHANGE AND HAS SAID THAT SINCE THAT
14 HAPPENED, SINCE THAT -- IT WAS DEALT WITH IN THAT FASHION, SHE
15 HAD NO MORE PROBLEMS WITH MR. SUAREZ.

16 NOW, I THINK IT'S IMPORTANT TO KEEP IN MIND THE TIMEFRAME
17 HERE. THE INCIDENT ON THE FLOOR OCCURRED ON OCTOBER 4, 2009.

18 THIS INCIDENT INVOLVING MR. SUAREZ OCCURRED IN APRIL 2007,
19 AT LEAST, THAT'S WHEN IT WAS FIRST REPORTED TO US. IT HADN'T
20 BEEN REPORTED BEFORE THEN.

21 THERE WERE NO MORE COMPLAINTS FROM MS. DANG ABOUT
22 MR. SUAREZ FOR TWO AND A HALF YEARS.

23 SHE DID NOT COMPLAIN TO HER SUPERVISOR, MR. ORTEGA, SHE
24 DIDN'T COMPLAIN TO H.R., SHE DIDN'T COMPLAIN TO MR. WERNER, SHE
25 DIDN'T COMPLAIN TO THE UNION.

1 THE SITUATION INVOLVING THIS ALLEGED SEXUAL HARASSMENT BY
2 MR. SUAREZ WAS HANDLED PROMPTLY, APPROPRIATELY, AS SOON AS IT
3 WAS BROUGHT TO THE ATTENTION OF BAY 101 AND THERE WERE NO
4 FURTHER PROBLEMS, AT LEAST WE WERE TOLD OF NONE, UNTIL THIS
5 INCIDENT OF OCTOBER 2009.

6 I MENTIONED SHE FILED A GRIEVANCE ABOUT THAT WITH THE
7 UNION AND THEN WALKED OUT OF THE MEDIATION.

8 AND SHE WROTE A LETTER, APPARENTLY WITH HER HUSBAND'S
9 HELP, AND IT WAS IN THAT LETTER AND IN THAT GRIEVANCE THAT
10 SUDDENLY THIS INCIDENT THAT HAPPENED TWO AND A HALF YEARS
11 EARLIER, ABOUT WHICH WE HAD HEARD NOTHING, WAS AN ONGOING
12 PROBLEM AND WAS ANOTHER EXAMPLE OF THE MISTREATMENT THAT SHE
13 SUFFERED AT THE HANDS OF THE CLUB AND WHAT HAVE YOU.

14 YOU'LL DECIDE FOR YOURSELF HOW MUCH WEIGHT TO GIVE THAT
15 CLAIM.

16 NOW, I'M ALMOST DONE HERE.

17 AS I MENTIONED EARLIER, PROBABLY THE VAST MAJORITY OF THE
18 FOOD SERVICE WORKERS AT BAY 101 ARE ASIAN, AND MOST OF THEM ARE
19 VIETNAMESE. SAME WITH THE MANY, MANY VIETNAMESE CUSTOMERS.

20 NOW, ONE OF THE THINGS THAT SHE HAS CLAIMED IS THAT SHE
21 WAS DISCRIMINATED AGAINST BECAUSE SHE'S VIETNAMESE. AND SHE
22 TOLD THE INDEPENDENT INVESTIGATOR, CAROLE EDMAN, "THERE IS
23 DISCRIMINATION AGAINST VIETNAMESE HERE."

24 WELL, MS. EDMAN -- SHE MENTIONED TWO PARTICULAR PEOPLE,
25 AND MS. EDMAN -- SHE MENTIONED TWO PARTICULAR PEOPLE THAT SHE

1 CLAIMED HAD BEEN VICTIMIZED BY THIS COOK, SUAREZ.

2 AND WHEN THE INVESTIGATOR TALKED TO THOSE PARTICULAR
3 PEOPLE, THEY DENIED THESE ALLEGATIONS.

4 AND IN LOOKING AT THE NUMBER OF PEOPLE WHO WERE
5 INTERVIEWED HERE, CHI LUONG, AHN HUYNH, NGA NGUYEN, SO NGUYEN,
6 ALBERTA NG, THAT'S ELLIS NG, NONE OF THESE PEOPLE SUPPORTED THE
7 CLAIM THAT THESE PEOPLE WERE DISCRIMINATED AGAINST.

8 AND THE SUGGESTION THAT SHE WAS TERMINATED BECAUSE SHE WAS
9 VIETNAMESE IS JUST ABSOLUTELY FALSE.

10 AND I THINK THE EVIDENCE WILL SHOW -- AND I'M GOING TO GET
11 INTO THE CIRCUMSTANCES SURROUNDING THE TERMINATION NOW AND THEN
12 I'LL BE DONE.

13 AFTER MR. WERNER GOT THIS REPORT, IT'S TRUE HE WAS THE
14 ONLY PERSON WHO READ IT. HE WAS THE ONLY PERSON WHO KEPT IT.
15 IT WAS A HIGHLY CONFIDENTIAL REPORT.

16 YOU'LL HEAR FROM CAROLE EDMAN ABOUT HOW SHE WENT ABOUT
17 DOING HER WORK.

18 BUT ESSENTIALLY THIS IS A SENSITIVE MATTER AND IT WAS
19 IMPORTANT THAT MR. WERNER KEEP THIS TO HIMSELF.

20 AND HE BASICALLY AGREED OR ACCEPTED THE RECOMMENDATIONS OF
21 THE INVESTIGATOR, WHICH YOU WILL RECALL NUMBER 3 WAS A TWO-WEEK
22 PERFORMANCE TRAINING REGIMEN FOR MS. DANG.

23 HE PREPARED A STATEMENT TO BE READ TO MS. DANG WHEN THEY
24 MET. HE ARRANGED FOR VINCE SHAW, HIS DIRECT SUBORDINATE,
25 DIRECTOR OF OPERATIONS, TO MEET WITH MS. DANG AND

1 JENNIFER GILBERT, THE H.R. MANAGER, AND NICK ORTEGA, HER
2 SUPERVISOR, TO DISCUSS HOW THEY WERE GOING TO MOVE FORWARD WITH
3 HER.

4 MR. WERNER REMINDED EVERYBODY THAT THERE WAS NO
5 RETALIATION HERE AT BAY 101. THE MEETING WAS PLANNED TO INFORM
6 THE PLAINTIFF OF THE OUTCOME OF THE INVESTIGATION AND WHAT
7 FURTHER TRAINING AS A SERVER THEY WERE GOING TO GIVE TO TRY TO
8 HELP HER IMPROVE HER PERFORMANCE.

9 IT WAS SCHEDULED FOR 7:00 A.M., WHICH WAS WHEN HER SHIFT
10 ENDED. THEY WEREN'T GOING TO BRING HER IN OFF DUTY OR ANYTHING
11 ELSE. IT WAS AT THE END OF HER SHIFT.

12 WHEN THEY TOLD HER ABOUT THIS, SHE SAID THAT -- THIS IS
13 AROUND 4:00 O'CLOCK IN THE MORNING. KEEP IN MIND SHE'S WORKING
14 THE NIGHT SHIFT -- 4:00 O'CLOCK IN THE MORNING WHEN HER
15 SUPERVISOR TOLD HER THAT "WE'RE GOING TO HAVE A MEETING TO
16 DISCUSS SOMETHING WITH YOU AT 7:00 A.M."

17 SHE SAID SHE WAS TIRED AND HAD, QUOTE-UNQUOTE, "STUFF" TO
18 DO. SHE DIDN'T EXPLAIN WHAT THAT STUFF WAS OR ANYTHING MORE
19 THAN THAT.

20 SHE WAS TOLD THAT SHE HAD TO BE AT THE MEETING, THAT IT
21 WOULD BE A SHORT MEETING.

22 AND HE DIDN'T GO INTO ANY DETAILS OF THE MEETING BECAUSE
23 HE THOUGHT THAT THAT WAS SOMETHING THAT SHOULD BE PRESENTED TO
24 HER AT THE APPROPRIATE TIME.

25 SHE SAID SHE DIDN'T WANT TO STAY PAST HER 7:00 O'CLOCK

1 QUITTING TIME.

2 THE REASON IT HAD BEEN PLANNED AT 7:00 A.M., OR AT
3 QUITTING TIME, IS SO THAT SHE WOULD BE ABLE TO WORK AND GET HER
4 TIPS AND WHAT HAVE YOU RIGHT UP UNTIL THE END OF HER SHIFT.

5 WHEN SHE SAID SHE WAS TIRED AND HAD "STUFF" TO DO, THEN
6 MR. ORTEGA, HER SUPERVISOR, MADE SOME CALLS TO SEE IF THE
7 MEETING COULD BE MOVED UP AND SO IT COULD BE HELD DURING HER
8 WORK TIME, DURING HER SHIFT SO THAT SHE WOULDN'T BE DETAINED
9 AND SHE COULD GO DO HER, QUOTE-UNQUOTE, "STUFF" AND WHAT HAVE
10 YOU.

11 BEFORE THAT COULD BE ARRANGED, HE RECEIVED A CALL,
12 MR. ORTEGA, THE SUPERVISOR, FROM MS. DANG'S HUSBAND, WHO
13 DEMANDED TO KNOW WHO ORGANIZED THE MEETING, WHAT IT WAS ABOUT.

14 MR. ORTEGA SAID THE MEETING WAS SET UP BY MR. WERNER AND
15 THAT MR. ORTEGA COULD NOT DISCUSS THE DETAILS WITH MS. DANG'S
16 HUSBAND.

17 HE SAID THAT MS. DANG WAS NOT GOING TO BE ATTENDING THE
18 MEETING AND THAT HE WAS GOING TO CONTACT AN ATTORNEY AND IF
19 MR. WERNER WANTED TO SPEAK TO HIM, HE COULD CALL HIM.

20 HE WAS ASKING WHETHER HE WAS REFUSING, ON PLAINTIFF'S
21 BEHALF, TO GO TO THE MEETING AND HE SAID YES.

22 AND THEN HE CALLED THE DIRECTOR OF OPERATIONS AND THE H.R.
23 PERSON AND SAID THERE WAS NOT GOING TO BE A MEETING.

24 SHE THEN CAME TO HIM AND SAID "I'M TIRED AND I WANT TO GO
25 HOME EARLY," AND HE SAID, "WELL, I GUESS IF YOU'RE NOT GOING TO

1 GO TO THE MEETING, YOU CAN GO HOME EARLY."

2 AND THAT'S WHAT HAPPENED.

3 AND WHEN MR. WERNER CAME TO WORK LATER THAT MORNING AND
4 WAS TOLD ABOUT THIS, AND ABOUT HER REFUSAL TO ATTEND THIS
5 MEETING, TO, AGAIN, USE THE METAPHOR MY FRIEND DID, IT WAS THE
6 LAST STRAW.

7 NOW, YOU MAY SAY, WELL, I DON'T KNOW IF IT WAS FAIR OR
8 UNFAIR OR WHAT HAVE YOU.

9 BUT THE POINT HERE IS THAT THIS TRIAL IS ABOUT WAS SHE
10 TERMINATED AS A RESULT OF RETALIATION FOR MAKING THESE
11 COMPLAINTS EARLIER, TWO AND A HALF YEARS EARLIER ABOUT
12 MR. SUAREZ?

13 FOLLOWING THIS INCIDENT ON THE FLOOR ON OCTOBER 4, 2009,
14 IS THAT THE REASON FOR THE TERMINATION AND RETALIATION FOR
15 THOSE?

16 I THINK THE EVIDENCE WILL STRONGLY SHOW IT WAS NOT.

17 THE OTHER GROUNDS SHE HAS IN THIS CASE IS THAT SHE WAS A
18 VICTIM OF DISCRIMINATION AS A VIETNAMESE. THAT WASN'T THE
19 REASON.

20 AND IF THOSE ARE NOT THE REASONS, THEN THERE'S NO BASIS
21 FOR A VERDICT FOR THE PLAINTIFF IN THIS CASE.

22 NOW, YOU'RE GOING TO HEAR, I GUESS, FROM MS. DANG AND HER
23 HUSBAND ABOUT HOW ALL OF HER PROBLEMS IN LIFE ARE THE RESULT OF
24 HER MISTREATMENT AT BAY 101.

25 AND I HEARD SOMETHING SAID THIS MORNING ABOUT DEPRESSION.

1 THESE ALLEGATIONS WERE MADE IN HER COMPLAINT WHEN SHE
2 FILED THIS LAWSUIT.

3 AND WE ARRANGED FOR AN INDEPENDENT MEDICAL EXAMINATION.

4 THIS IS BY A PSYCHIATRIST THAT EXAMINED MS. DANG AND -- TO
5 DETERMINE WHETHER OR NOT THIS DEPRESSION THAT SHE ASCRIBES TO
6 THIS TREATMENT WAS, IN FACT, THE RESULT OF SOMETHING THAT
7 HAPPENED AT BAY 101.

8 IN FACT, WHAT THE PSYCHIATRIST HAD DETERMINED WAS THAT SHE
9 HAD BEEN SUFFERING FROM DEPRESSION LONG BEFORE ANY OF THESE
10 INCIDENTS, THIS WAS NOT SOMETHING THAT WAS NEW, AND SHE HAD
11 SOME PRETTY SERIOUS MENTAL PROBLEMS.

12 SHE HEARD VOICES. SHE HAD VOICES TELLING HER THAT SHE
13 COULD FLY FROM A HIGH BUILDING; THAT THERE WAS SOME BLACK
14 SHADOW THAT ENTERED INTO HER; THAT SHE COULD READ PEOPLE'S
15 MINDS AND WHAT HAVE YOU.

16 NOW, SHE DID REPORT TO THE PSYCHIATRIST THAT WHEN SHE TOOK
17 HER MEDICATION, THESE VOICES STOPPED AND THE SHADOW WENT AWAY
18 AND WHAT HAVE YOU.

19 AND THERE IS -- IN CONCLUSION, I THINK THE EVIDENCE IS
20 GOING TO SHOW THAT WE HAVE HERE A VERY TROUBLED PERSON WHO HAD
21 A LEARNING DIFFICULTY, WHETHER IT WAS DUE TO LANGUAGE OR WHAT
22 HAVE YOU, STUBBORN, UNWILLING TO ACCEPT GUIDANCE, AND
23 ESSENTIALLY WHEN SHE FINALLY LOST HER JOB, POINTING THE FINGER
24 AND SAYING, "WELL, YOU KNOW, I'VE BEEN THE VICTIM OF
25 DISCRIMINATION AND RETALIATION AND IT'S ALL SOMEBODY ELSE'S

1 FAULT."

2 I DON'T WANT TO BE HARSH HERE ABOUT THIS PERSON BECAUSE I
3 DON'T THINK THAT'S THE RIGHT THING TO DO. I THINK SHE'S A
4 PERSON THAT DESERVES SYMPATHY AND I DO NOT BELIEVE THAT SHE
5 DESERVES A VERDICT IN THIS CASE BASED ON THE FACTS AND THE
6 EVIDENCE AS I HAVE OUTLINED THEM FOR YOU.

7 I'M SORRY TO HAVE GONE ON SO LONG, BUT THIS IS A VERY
8 IMPORTANT CASE TO MY CLIENT, AND I APPRECIATE YOUR
9 ATTENTIVENESS THROUGHOUT MY OPENING STATEMENT.

10 AND WE'LL NOW BE GETTING ON TO THE EVIDENCE.

11 THANK YOU VERY MUCH. -

12 THE COURT: DO YOU WANT TO CALL YOUR FIRST WITNESS?

13 MS. NGUYEN: YES, YOUR HONOR. THE PLAINTIFF WOULD
14 LIKE TO CALL MR. RON WERNER.

15 THE COURT: ALL RIGHT.

16 THE CLERK: RAISE YOUR RIGHT HAND, PLEASE.

17 **RONALD WERNER,**

18 BEING CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF, HAVING
19 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

20 THE WITNESS: I DO.

21 THE CLERK: THANK YOU.

22 FOR THE RECORD, PLEASE STATE YOUR NAME AND SPELL YOUR LAST
23 NAME.

24 THE WITNESS: MY NAME IS RONALD ERNST, WERNER,
25 W-E-R-N-E-R.

1 THE CLERK: THANK YOU.

2 **AS-ON CROSS-EXAMINATION**

3 BY MS. NGUYEN:

4 Q. GOOD MORNING, MR. WERNER.

5 A. GOOD MORNING.

6 Q. AND MR. WERNER, YOU'RE BAY 101'S VICE PRESIDENT; RIGHT?

7 A. I AM.

8 Q. AND YOU HAVE WORKED FOR BAY 101 EVER SINCE IT OPENED FOR
9 BUSINESS YEARS AGO; CORRECT?

10 A. NOT EXACTLY. IT OPENED IN '94 AND I STARTED IN DECEMBER
11 OF '95 AS AN EMPLOYEE.

12 Q. AND YOU'RE ALSO A LICENSED ATTORNEY?

13 A. I AM.

14 Q. AND SO AT SOME POINT IN THE PAST YOU HAVE BEEN GENERAL
15 COUNSEL, AN ATTORNEY FOR BAY 101; CORRECT?

16 A. YES.

17 Q. AND DURING THE TIME THAT MS. DANG WAS EMPLOYED AT BAY 101
18 BETWEEN 2006 AND 2009, YOU WERE THE GENERAL MANAGER OF BAY 101?

19 A. YES.

20 Q. AND AS THE GENERAL MANAGER, YOU MANAGED BAY 101'S
21 OPERATIONS?

22 A. DURING THAT PERIOD OF TIME, YES.

23 Q. AND YOU MADE DECISIONS REGARDING HIRING, DISCIPLINING, AND
24 TERMINATION; CORRECT?

25 A. YES.

1 Q. AND DO YOU OWN ANY INTEREST IN BAY 101?

2 A. I DO.

3 Q. NOW, BETWEEN 2006 AND 2009 WHEN MY CLIENT WAS WORKING AT
4 BAY 101, COOKS AND SERVERS, LIKE MS. DANG, WORKED IN THE FOOD
5 AND BEVERAGE DEPARTMENT?

6 A. YES.

7 Q. AND IN 2006 THE DIRECTOR AND EXECUTIVE CHEF OF THE FOOD
8 AND BEVERAGE DEPARTMENT WAS A MAN BY THE NAME OF
9 JOHN ST. CROIX?

10 A. YES.

11 Q. AND AT THE TIME NICK ORTEGA WAS THE EXECUTIVE SOU CHEF?

12 A. YES.

13 Q. AND MR. ST. CROIX PASSED AWAY IN NOVEMBER OF 2007;
14 CORRECT?

15 A. YES.

16 Q. AND SOME TIME AFTER THAT, MR. ORTEGA FILLED IN FOR
17 MR. ST. CROIX AS ACTIVE FOOD AND BEVERAGE DIRECTOR?

18 A. YES.

19 Q. AND HE TOOK OVER THE JOB OF MANAGING THE KITCHEN, THE
20 SERVERS AND THE COOKS AND THE SERVERS AND THE PORTERS; CORRECT?

21 A. YES.

22 Q. AND AT BAY 101, THE COOKS AND SERVERS AND PORTERS ARE ALL
23 UNION EMPLOYEES?

24 A. YES.

25 Q. AND THEY BELONG HERE TO LOCAL UNITE HERE! LOCAL 19?

1 A. I THINK WITH THE EXCEPTION -- I'M SORRY. THAT -- YES, THE
2 SECRETARY AND MR. ORTEGA ARE NOT UNION EMPLOYEES.

3 Q. SO MANAGERS LIKE MR. ORTEGA ARE NOT UNIONIZED?

4 A. YES.

5 THE COURT: YES, THAT'S CORRECT?

6 THE WITNESS: YES, THAT'S CORRECT, THEY'RE NOT
7 UNIONIZED.

8 MS. NGUYEN: THANK YOU, YOUR HONOR.

9 Q. MR. WERNER, I'M GOING TO ASK YOU TO TAKE A LOOK AT
10 EXHIBIT 1016. IT WOULD BE IN THE WHITE BINDER, THE JOINT
11 EXHIBIT BINDERS.

12 HAVE YOU FOUND IT?

13 A. YES, I HAVE.

14 Q. AND YOU HAVE SEEN THAT BEFORE, HAVEN'T YOU, MR. WERNER?

15 A. YES.

16 Q. AND THAT'S THE LETTER THAT MS. DANG SENT TO YOU IN OCTOBER
17 OF 2009; CORRECT?

18 A. YES.

19 MS. NGUYEN: YOUR HONOR, WE WOULD MOVE TO HAVE THAT
20 EXHIBIT ADMITTED INTO EVIDENCE.

21 THE CLERK: I'M SORRY. STATE THE EXHIBIT NUMBER
22 AGAIN, PLEASE.

23 MS. NGUYEN: 1016.

24 THE CLERK: THANK YOU.

25 MR. MCMANIS: I HAVE NO OBJECTION, YOUR HONOR, TO

1 THIS EXHIBIT COMING IN EVIDENCE.

2 BUT I BELIEVE IT SHOULD COME IN WITH A LIMITING
3 INSTRUCTION. IT'S PROFFERED TO SHOW WHAT INFORMATION WAS
4 PROVIDED TO MR. WERNER AS OPPOSED TO THE TRUTH OF ANY
5 ACCUSATIONS THAT MS. DANG MAKES IN THE LETTER.

6 THE COURT: THIS IS WHAT YOU'RE OFFERING IT FOR,
7 ISN'T IT?

8 MS. NGUYEN: YES, YOUR HONOR.

9 MR. MCMANIS: THANK YOU.

10 THE COURT: IT MAY BE RECEIVED WITH THAT LIMITATION.
11 IT'S OFFERED TO SHOW THE COMPLAINT THAT WAS MADE TO MR. WERNER.
12 THE STATEMENTS IN THE LETTER CANNOT BE CONSIDERED FOR
13 THEIR TRUTH. THAT WOULD HAVE TO COME FROM OTHER TESTIMONY.

14 (PLAINTIFF'S EXHIBIT 1016 WAS RECEIVED IN EVIDENCE.)

15 BY MS. NGUYEN:

16 Q. MR. WERNER, WITH THIS COMPLAINT, MS. DANG ALSO ATTACHED TO
17 IT COUNSELLING MEMOS, AS WELL AS THE LETTER THAT SHE SENT TO
18 BAY 101 BACK IN APRIL OF 2007 REGARDING THE SEXUAL HARASSMENT
19 CLAIMS; CORRECT?

20 A. SHE DID.

21 Q. AND WHEN YOU RECEIVED THIS LETTER IN OCTOBER OF 2009, WAS
22 THAT THE FIRST TIME THAT YOU HAD HEARD ABOUT THE SEXUAL
23 HARASSMENT COMPLAINT BETWEEN -- MADE BY MS. DANG AGAINST
24 MR. SUAREZ?

25 A. YES, IT WAS.

1 Q. AND SO PRIOR TO THAT YOU HAD NEVER BEEN TOLD ABOUT THE
2 INVESTIGATION BACK IN 2007?

3 A. NO, I HAD NOT.

4 Q. AND IN MS. DANG'S LETTER IN OCTOBER OF 2009, SHE
5 COMPLAINED ABOUT DISCRIMINATION AND RETALIATION BY HER
6 SUPERVISOR AND BY THE H.R. MANAGER, JENNIFER GILBERT; CORRECT?

7 A. SHE COMPLAINED ABOUT RETALIATION FROM HER SUPERVISOR AND A
8 LACK OF SUPPORT FROM THE HUMAN RESOURCES DEPARTMENT.

9 Q. AND SHE TALKED ABOUT FEELING THAT SHE WAS BEING BULLIED?

10 A. SHE SAID THAT MS. GILBERT HAD TOLD HER TO SHUT UP OR BE
11 QUIET.

12 Q. AND SHE COMPLAINED ABOUT HOW SHE WAS NOT ALLOWED TO GIVE
13 HER SIDE OF THE STORY?

14 A. I BELIEVE THAT'S THE GENERAL GIST TO BE FORMED FROM THIS,
15 YES.

16 Q. AND SHE ALSO COMPLAINED ABOUT THE UNFAIR SUSPENSION WITH
17 THE INCIDENT WITH LINDA ELIAS?

18 A. SHE DID.

19 Q. AND THEN IN THAT LETTER SHE ALSO COMPLAINED ABOUT, ON THE
20 SECOND PAGE, ABOUT THE RUMORS THAT WERE BEING PASSED AROUND
21 ABOUT HER AND LUCIO SUAREZ; RIGHT?

22 A. SHE DID.

23 Q. AND WITH THE LETTER SHE ASKED YOU FOR A COMPLETE
24 INVESTIGATION INTO THE CASE?

25 A. THAT'S THE THIRD PARAGRAPH, YES, ON THE SECOND PAGE.

1 Q. AND BEFORE RECEIVING THAT LETTER, YOU DIDN'T KNOW ANYTHING
2 ABOUT HER REQUEST FOR A TRANSFER?

3 A. I WASN'T AWARE OF THAT, NO.

4 Q. AND PRIOR TO RECEIVING THAT LETTER, WERE YOU AWARE OF
5 ANYONE ELSE COMPLAINING ABOUT LUCIO SUAREZ AND SEXUAL
6 HARASSMENT?

7 A. I CAN'T REMEMBER.

8 Q. WEREN'T THERE COMPLAINTS BY OTHER WOMEN ABOUT LUCIO SUAREZ
9 AND SEXUAL HARASSMENT?

10 A. NOT THAT I REMEMBER SPECIFICALLY. I REMEMBER THAT THERE
11 WAS A COMPLAINT ABOUT A COOK IN THE KITCHEN. I DON'T REMEMBER
12 IF THAT WAS LUCIO, NO.

13 Q. AND DO YOU KNOW WHETHER THAT WAS INVESTIGATED?

14 A. YES, IT WAS.

15 Q. AND DO YOU KNOW WHETHER -- DO YOU KNOW HOW IT WAS
16 RESOLVED?

17 A. I BELIEVE THE INDIVIDUAL INVOLVED WAS SUSPENDED FOR A
18 PERIOD OF TIME.

19 Q. AND LUCIO SUAREZ, HE WAS ONE OF THE LEAD COOKS IN THE
20 KITCHEN?

21 A. LUCIO SOMETIMES SERVED AS A LEAD COOK. I THINK HE WAS A
22 SUBSTITUTE. I DON'T THINK THAT WAS HIS JOB TITLE.

23 Q. AND SO WHEN THERE WERE NOT OTHER SUPERVISORS AROUND, HE
24 WAS THE ONE IN CHARGE; CORRECT?

25 A. YES, ON THE SWING SHIFT.

1 Q. NOW, TURNING YOUR ATTENTION TO THE OCTOBER 2009 INCIDENT
2 WITH MS. ELIAS, YOU DIDN'T KNOW ANYTHING ABOUT THAT. YOU ONLY
3 HEARD ABOUT IT AFTER THE FACT FROM MR. ORTEGA; CORRECT?
4

5 A. I HEARD ABOUT IT AFTER IT OCCURRED, YES.
6

7 Q. AND THE REASON THAT MR. ORTEGA GAVE YOU TO EXPLAIN THE
8 SUSPENSION WAS THAT MS. DANG ARGUED WITH A COWORKER?
9

10 A. AND WITH A CUSTOMER ON THE FLOOR.
11

12 Q. BUT YOU WEREN'T THERE AND YOU DIDN'T -- YOU DON'T KNOW
13 ANYTHING FIRSTHAND; CORRECT?
14

15 A. I WASN'T PRESENT AT THE TIME, NO.
16

17 Q. AND THE DECISION MADE TO SUSPEND MS. DANG, YOU DIDN'T HAVE
18 ANYTHING TO DO WITH THAT DECISION, DID YOU?
19

20 A. NO, I DID NOT.
21

22 Q. NOW, AFTER YOU RECEIVED THIS LETTER FROM MS. DANG, DID YOU
23 TELL MR. ORTEGA AND MS. GILBERT ABOUT IT?
24

25 A. I DID.
26

27 Q. AND YOU TOLD THEM NOT TO RETALIATE; CORRECT?
28

29 A. YES.
30

31 Q. BUT YOU DIDN'T TELL THEM ABOUT WHAT SPECIFIC ACTION
32 CONSTITUTED RETALIATION, DID YOU?
33

34 A. I DID NOT.
35

36 Q. BECAUSE YOU EXPECTED THEM, AS THE SUPERVISOR AND THE H.R.
37 MANAGER, TO ALREADY KNOW WHAT RETALIATION MEANT; CORRECT?
38

39 A. YES.
40

41 Q. AND, MR. WERNER, I'M GOING TO ASK YOU TO TAKE A LOOK AT
42

1 EXHIBIT 1015.

2 A. YES.

3 Q. AND I GUESS WHAT YOU HAVE THERE IS THE CD AND NOT THE
4 ACTUAL EXHIBITS. LET ME GET THEM UP ON THE SCREEN FOR YOU.

5 MR. WERNER, I'M GOING TO DIRECT YOUR ATTENTION TO THE
6 PROJECTION SCREEN.

7 EXHIBIT 1015 IS THE TRAINING MATERIALS THAT BAY 101 USES
8 FOR ITS ANNUAL SEXUAL HARASSMENT TRAINING; CORRECT?

9 A. IT MAY HAVE BEEN FOR ONE YEAR, YES.

10 Q. AND YOU'VE SEEN SOMETHING SIMILAR TO THAT BEFORE, HAVEN'T
11 YOU?

12 A. YES.

13 Q. AND YOU YOURSELF HAVE ATTENDED TRAININGS LIKE THAT,
14 HAVEN'T YOU?

15 A. I HAVE.

16 MS. NGUYEN: YOUR HONOR, WE WOULD MOVE TO HAVE THIS
17 EXHIBIT ADMITTED INTO EVIDENCE.

18 MR. McMANIS: NO OBJECTION.

19 THE COURT: ALL RIGHT. IT MAY BE RECEIVED.

20 (PLAINTIFF'S EXHIBIT 1015 WAS RECEIVED IN EVIDENCE.)

21 BY MS. NGUYEN:

22 Q. MR. WERNER, THIS IS PART OF THE TRAINING MATERIALS FROM
23 BAY 101.

24 BAY 101 TAUGHT ITS EMPLOYEES THAT RETALIATION OCCURS WHEN
25 THERE IS ADVERSE EMPLOYMENT ACTION AGAINST AN EMPLOYEE WHO

1 MAKES A CLAIM, CHARGE, TESTIFIED, ASSISTED, OR PARTICIPATED IN
2 ANY MANNER IN AN INVESTIGATION, PROCEEDING OR HEARING.

3 CORRECT?

4 A. CORRECT.

5 Q. AND ACCORDING TO BAY 101'S TRAINING MANUALS, RETALIATION
6 WOULD INCLUDE HARASSMENT FROM A COWORKER OR SUPERVISOR; RIGHT?

7 A. AFTER EITHER MAKING A COMPLAINT OR HAVING PARTICIPATED IN
8 THAT INVESTIGATION REGARDING A COMPLAINT FOR HARASSMENT OR
9 WORKPLACE VIOLENCE, YES.

10 Q. AND THE RETALIATION WOULD ALSO INCLUDE NEGATIVE
11 EVALUATIONS; UNDESIRABLE ASSIGNMENT OR TOUGH PROJECTS; NEGATIVE
12 ATTITUDE TOWARDS EMPLOYEES; INCREASED DISCIPLINE; SELECTIVE
13 ENFORCEMENT OF RULES; RIGHT?

14 A. AFTER HAVING MADE A COMPLAINT, YES.

15 Q. AND YOU WOULD HAVE EXPECTED THAT MR. ORTEGA AND
16 MS. GILBERT WOULD NOT HAVE ENGAGED IN ANY OF THESE ACTIVITIES;
17 CORRECT?

18 A. I WOULD HAVE, YES.

19 Q. AFTER YOU RECEIVED THE OCTOBER LETTER AND COMPLAINT FROM
20 MS. DANG, YOU ORDERED AN INVESTIGATION INTO THE COMPLAINT;
21 CORRECT?

22 A. I ORDERED -- I HAD ONE CONDUCTED, YES.

23 Q. AND THAT REPORT I BELIEVE COUNSEL REFERRED TO EARLIER WAS
24 DATED DECEMBER 10TH, 2009. DO YOU RECALL THAT?

25 A. THAT'S MY RECOLLECTION, YES.

1 Q. AND YOU RECEIVED THE REPORT AND DISCUSSED IT WITH YOUR
2 COUNSEL; RIGHT?

3 A. YES. I RECEIVED THE REPORT AND AFTER READING IT, I
4 BELIEVE I DID DISCUSS IT WITH COUNSEL.

5 Q. AND YOU READ THE ENTIRE WRITTEN REPORT, OVER 100 PAGES;
6 CORRECT?

7 A. I DID.

8 Q. AND WHEN YOU READ THAT REPORT, DIDN'T THAT INDICATE TO YOU
9 THAT THE INVESTIGATOR HAD TO GO THROUGH AND ARRANGE FOR THE
10 INTERVIEW WITH MS. DANG THROUGH HER COUNSEL AT THE TIME?

11 A. I RECALL THAT SHE HAD COUNSEL PRESENT WHEN AN INTERVIEW
12 WAS CONDUCTED WITH HER; THAT'S MS. DANG HAD COUNSEL PRESENT.

13 Q. AND BY THAT TIME, SHE HAD ALSO FILED COMPLAINTS WITH THE
14 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING; CORRECT?

15 A. SHE DID, YES.

16 Q. AND AS A RESULT OF THAT REPORT, YOU DECIDED TO SEND
17 MR. ORTEGA TO MORE MANAGEMENT TRAINING?

18 A. YES.

19 Q. AND BECAUSE IT WAS REVEALED THAT EMPLOYEES FELT THAT
20 MR. ORTEGA WASN'T SYMPATHETIC OR CONCERNED ABOUT THEIR WELFARE?

21 A. I WAS CONCERNED WITH HIS MANAGEMENT STYLE.

22 Q. AND YOU YOURSELF, MR. WERNER, HAVE HAD EMPLOYEES COME AND
23 COMPLAIN ABOUT MR. ORTEGA TO YOU, HAVEN'T YOU?

24 A. I HAVE NOT HAD THEM COME TO ME, BUT I HAVE HAD EMPLOYEES
25 MENTION THAT THEY FELT UNCOMFORTABLE WITH HIS MANAGEMENT STYLE.

1 Q. AND SO AFTER YOU RECEIVED MS. EDMAN'S INVESTIGATION
2 REPORT, YOU CALLED A MEETING WITH MS. GILBERT AND MR. ORTEGA
3 AND VINCENT SHAW; CORRECT?

4 A. YES.

5 Q. AND THAT MEETING WAS TO PREPARE FOR A MEETING WITH
6 MS. DANG TO LET HER KNOW THE RESULTS OF THE INVESTIGATION?

7 A. YES.

8 Q. AND THE MEETING WITH MS. DANG, IN ADDITION TO TELLING HER
9 ABOUT THE RESULTS OF THE INVESTIGATION, WAS ALSO TO GIVE HER
10 HER TWO-WEEK PERFORMANCE IMPROVEMENT PLAN; CORRECT?

11 A. IT WAS TO DISCUSS HER TRAINING, YES.

12 Q. OKAY. AND YOU HAD PREPARED A MEMO TO BE READ TO MS. DANG;
13 CORRECT?

14 A. I DID.

15 Q. AND I'M GOING TO DIRECT YOUR ATTENTION TO EXHIBIT 1014,
16 PLEASE.

17 HAVE YOU FOUND IT, MR. WERNER?

18 A. YES.

19 Q. AND IS THIS THE MEMO THAT YOU PREPARED FOR THE MEETING
20 WITH MS. DANG TO TELL HER ABOUT THE RESULTS OF THE
21 INVESTIGATION?

22 A. I BELIEVE IT IS.

23 Q. AND ALSO ATTACHED TO YOUR MEMO IS THE -- ARE THE TWO
24 COPIES OF THE COUNSELLING MEMOS FOR MS. DANG'S IMPROVEMENT
25 PERFORMANCE PLAN; CORRECT?

1 A. IT WASN'T PART OF WHAT I PREPARED.

2 Q. HAVE YOU SEEN THE COUNSELLING MEMO BEFORE?

3 A. YES.

4 Q. AND THAT COUNSELLING MEMO WAS PREPARED PER YOUR
5 INSTRUCTION; CORRECT?

6 A. YES.

7 MS. NGUYEN: YOUR HONOR, THE PLAINTIFF MOVES TO HAVE
8 EXHIBIT 1014 ADMITTED INTO EVIDENCE.

9 MR. MCMANIS: NO OBJECTION.

10 THE COURT: IT'S RECEIVED.

11 (PLAINTIFF'S EXHIBIT 1014 WAS RECEIVED IN EVIDENCE.)

12 BY MS. NGUYEN:

13 Q. AND MR. WERNER, AS SEEN FROM THE FIRST PARAGRAPH OF THIS
14 MEMO, YOU WERE TRYING TO TELL MS. DANG ABOUT THE RESULT OF THE
15 INVESTIGATION INTO HER COMPLAINT; RIGHT?

16 A. IT WAS MY DESIRE TO TELL HER THE RESULTS OF THE
17 INVESTIGATION.

18 Q. AND YOU WERE SENDING MS. GILBERT TO READ THIS MEMO TO
19 MS. DANG; CORRECT?

20 A. ACTUALLY MR. SHAW.

21 Q. MR. SHAW WAS THE ONE WHO WAS GOING TO READ IT TO HER?

22 A. THAT WAS MY INTENT, YES.

23 Q. SO IF MS. GILBERT SAID THAT SHE THOUGHT SHE WAS THE ONE TO
24 BE READING IT TO MS. DANG, SHE WAS WRONG?

25 A. NO. I GUESS THAT'S WHAT SHE BELIEVED.

1 Q. THE MEETING WHERE MS. DANG WAS SUPPOSED TO HAVE BEEN READ
2 THIS MEMO, BOTH MR. ORTEGA AND MS. GILBERT WERE GOING TO BE
3 THERE; CORRECT?

4 A. ALONG WITH MR. SHAW, YES.

5 Q. AND ACCORDING TO YOUR MEMO, YOU WERE TELLING MS. DANG THAT
6 HER COMPLAINTS WERE UNFOUNDED?

7 A. YES, THAT MOST OF THEM WERE.

8 Q. BUT SOME WERE FOUNDED?

9 A. I DON'T THINK ANY OF THEM WERE FOUNDED EXCEPT PERHAPS
10 CONFUSION REGARDING THE TRANSFER POLICY.

11 Q. AND WHERE YOU SAID FOR THE MOST PART THEY WERE UNFOUNDED,
12 BESIDES THE TRANSFER POLICY, WERE THERE PARTS THAT THE
13 INVESTIGATOR FOUND THAT WERE FOUNDED?

14 A. I DON'T THINK SO.

15 Q. SO THE INVESTIGATOR DIDN'T FIND THAT THERE WERE COMPLAINTS
16 AGAINST MR. ORTEGA?

17 A. WELL, SHE SAID THAT THERE WERE COMPLAINTS REGARDING -- YOU
18 SEE, I DON'T THINK THAT SHE SAID THAT -- SHE SAID THAT HIS
19 MANAGEMENT STYLE COULD STAND SOME IMPROVEMENT IN HER OPINION
20 AND I AGREED WITH THAT.

21 Q. AND DID YOU ALSO SEE FROM THE INVESTIGATION REPORT THAT
22 THERE WERE COMPLAINTS ABOUT DISCRIMINATION FROM MS. GILBERT?

23 A. THAT THERE WERE COMPLAINTS ABOUT MS. GILBERT?

24 Q. YES.

25 A. I DIDN'T -- I DON'T RECALL ANY COMPLAINTS REGARDING

1 MS. GILBERT BEING DISCRIMINATING AGAINST ANYBODY.

2 THERE WAS AN ALLEGATION BY MS. DANG THAT PERHAPS

3 MS. GILBERT HAD DISCRIMINATED AGAINST HER IN THIS PROCESS.

4 Q. YOU DON'T RECALL READING IN MS. EDMAN'S REPORT ABOUT OTHER
5 EMPLOYEES COMPLAINING ABOUT MS. GILBERT?

6 A. ABOUT DISCRIMINATING AGAINST THEM?

7 Q. YES.

8 A. NOT DISCRIMINATION, NO.

9 Q. AT THIS MEETING THAT YOU WERE PLANNING FOR MS. DANG TO BE
10 THERE, YOU HAD PLANNED TO GET HER ON A TWO-WEEK IMPROVEMENT
11 TRAINING SCHEDULE; CORRECT?

12 A. I HAD PLANNED TO PROVIDE HER WITH TWO WEEKS OF TRAINING
13 AND THEN, AFTER THE TRAINING, TO EVALUATE HER PROGRESS. THAT'S
14 WHAT I HAD PLANNED.

15 Q. AND PART OF THE TRAINING WAS TO HAVE HER ASSIGNED TO A
16 VIETNAMESE SPEAKING SERVER TO HELP HER LEARN BETTER; CORRECT?

17 A. WELL, TO ENSURE THAT SHE HAD -- IF SHE HAD QUESTIONS, THAT
18 SHE COULD GET INSTRUCTION IN HER NATIVE TONGUE TO CLARIFY ANY
19 MISUNDERSTANDING THAT SHE MAY HAVE IF THE INSTRUCTION WAS GIVEN
20 TO HER IN ENGLISH ONLY.

21 Q. BECAUSE YOU UNDERSTOOD -- OR YOU WERE AWARE THAT SHE HAD
22 DIFFICULTIES WITH ENGLISH?

23 A. I WASN'T AWARE THAT SHE HAD DIFFICULTY WITH ENGLISH, BUT
24 SHE HAD BEEN INSISTING ON USING A VIETNAMESE INTERPRETER DURING
25 THE, I THINK, THE COURSE OF THIS INVESTIGATION, AND THAT GAVE

1 ME CONCERN THAT PERHAPS -- IN ORDER TO ENSURE THAT SHE HAD
2 EVERY OPPORTUNITY TO UNDERSTAND INSTRUCTION, THAT IF NECESSARY,
3 SHE SHOULD BE ABLE TO ASK AND RECEIVE ANSWERS IN VIETNAMESE
4 REGARDING HER TRAINING.

5 Q. OKAY. AND ARE YOU AWARE, MR. WERNER, THAT IN THE PAST
6 WHEN MS. DANG HAD MEETINGS WITH THE H.R. MANAGER,
7 JENNIFER GILBERT, THAT SHE USUALLY HAD A TRANSLATOR WITH HER?

8 A. I'M NOT NECESSARILY AWARE OF THAT.

9 WHAT I DO KNOW IS THAT IT IS OFTEN BAY 101 POLICY, IF A
10 PERSON HAS ANOTHER LANGUAGE THAT IS A SECOND LANGUAGE, TO HAVE
11 A PERSON WHO SPEAKS THAT SECOND LANGUAGE PRESENT IN THOSE
12 MEETINGS TO ENSURE THAT EVERYBODY IS GIVEN A FAIR OPPORTUNITY
13 TO EXPRESS THEIR OPINIONS AND MAKE ANY COMMENTS SO THERE'S NO
14 MISUNDERSTANDING. AT LEAST, THAT'S THE PURPOSE OF IT.

15 Q. AND SO THIS MEETING THAT YOU HAD WITH MR. SHAW,
16 MS. GILBERT, AND MR. ORTEGA TO PREPARE FOR THE MEETING WITH
17 MS. DANG, THAT OCCURRED A FEW DAYS BEFORE THE MONDAY OF
18 DECEMBER 21ST, 2009; CORRECT?

19 A. YES.

20 Q. OKAY. BUT THE FIRST TIME THAT MS. DANG WAS GIVEN NOTICE
21 OF THE DECEMBER 21ST, 2009 MEETING WAS ABOUT THREE HOURS BEFORE
22 THE END OF HER SHIFT?

23 A. THAT'S MY UNDERSTANDING.

24 Q. AND AT THIS MEETING, THERE WAS NOT GOING TO BE ANY UNION
25 REP THERE TO HELP HER? IS THAT YOUR UNDERSTANDING AS WELL?

1 A. I DON'T SEE -- I DIDN'T THINK THERE WAS A NEED FOR A UNION
2 REP.

3 Q. AND THERE WAS NO ARRANGEMENT MADE FOR ANY TRANSLATOR OR
4 INTERPRETER TO HELP HER UNDERSTAND?

5 A. IF SHE NEEDED AN INTERPRETER, WE COULD HAVE HAD ANOTHER
6 EMPLOYEE BE THERE, YES.

7 Q. BUT BASED ON YOUR UNDERSTANDING, THERE WASN'T ANYBODY
8 LINED UP FOR IT; CORRECT?

9 A. I DIDN'T BELIEVE THAT SHE NEEDED AN INTERPRETER.

10 Q. ALTHOUGH YOU SAID THAT YOU -- IT WAS BAY 101'S POLICY TO
11 ALWAYS HAVE SOMEONE THERE FOR SOMEONE WHOSE LANGUAGE IS NOT --

12 A. YOU MISSTATED WHAT I SAID. I SAID IT WAS OFTEN THE
13 PRACTICE, IF WE FELT THAT AN EMPLOYEE NEEDED ONE OR THEY ASKED
14 FOR ONE, TO HAVE AN INTERPRETER PRESENT.

15 Q. SO FOR THIS PARTICULAR MEETING, YOU DIDN'T FEEL THAT
16 MS. DANG NEEDED ONE?

17 A. NO, I DIDN'T.

18 Q. I'D LIKE TO DIRECT YOUR ATTENTION TOWARD THE BOTTOM OF
19 THAT PAGE AND TO THE SECOND PAGE WHERE YOU LISTED ALL OF THE
20 AREAS OF IMPROVEMENT THAT YOU WERE EXPECTING FROM MS. DANG. DO
21 YOU SEE THAT?

22 A. YES.

23 Q. AND, MR. WERNER, DID YOU GET THE INFORMATION FOR THE AREAS
24 THAT YOU'D LIKE TO SEE HER IMPROVE ON BASED ON COUNSELLING
25 MEMOS THAT YOU FOUND IN HER PERSONNEL FILE?

1 A. NO. I GOT THEM BASICALLY FROM THE REPORT.

2 Q. FROM MS. EDMAN'S REPORT?

3 A. YES.

4 Q. AND NOT FROM MR. ORTEGA OR ANYONE ELSE AT BAY 101?

5 A. NO. I CAME UP WITH A LIST MYSELF I THINK PRIMARILY BASED
6 UPON THE REPORT, AND IT MAY HAVE BEEN BASED ON AN INCIDENT THAT
7 OCCURRED DURING THE INVESTIGATORY PERIOD THAT ALSO I THOUGHT
8 NEEDED TO BE ADDRESSED AND IN THIS LIST.

9 Q. AND MS. EDMAN'S REPORT IS BASED ON INFORMATION THAT SHE
10 HAS OBTAINED FROM OTHER EMPLOYEES AND THE PERSONNEL FILES;
11 CORRECT?

12 A. THAT'S MY UNDERSTANDING.

13 Q. NOW I'D LIKE US TO MOVE TO THE MORNING OF DECEMBER 21ST,
14 2009.

15 THE COURT: THIS MIGHT BE A GOOD TIME TO TAKE A
16 BREAK.

17 MS. NGUYEN: SURE, YOUR HONOR.

18 THE COURT: WE'LL BE IN RECESS FOR ABOUT 15 MINUTES.

19 (RECESS FROM 10:22 A.M. TO 10:36 A.M.)

20 (JURY OUT AT 10:36 A.M.)

21 THE COURT: I THINK YOU HAD SOME ADDITIONAL EXHIBITS
22 YOU WERE CONCERNED ABOUT BEING USED.

23 MS. NGUYEN: I THINK, YOUR HONOR, YOU JUST SAID YOU
24 WANTED TO RESERVE ON SOME OF THOSE RULINGS WITH RESPECT TO THE
25 OBJECTIONS ON THE EVIDENCE.

1 THE COURT: I'M CONFUSED.

2 I THOUGHT THERE WERE A NUMBER THAT YOU WERE CONCERNED
3 ABOUT THAT MR. McMANIS WAS GOING TO USE ON THE EXAMINATION OF
4 MR. WERNER. WE WENT OVER A FEW AND I MADE RULINGS, BUT I
5 THOUGHT WE DIDN'T FINISH.

6 MS. NGUYEN: SO THOSE WERE THE ONES THAT I MENTIONED
7 THIS MORNING, BUT YOU SAID THAT YOU WANTED TO WAIT AND SEE
8 BESIDES THE INVESTIGATION REPORT.

9 I UNDERSTAND THAT THAT COMES IN WITH THE LIMITING
10 INSTRUCTION.

11 THE COURT: RIGHT.

12 MS. NGUYEN: BUT THEY WERE THE ONES WITH
13 KATE KNAPP'S MEMO AND THE HEARSAY STATEMENTS BY ALL OF THE
14 EMPLOYEES.

15 THE COURT: IT SEEMS TO ME -- I THOUGHT I RULED ON
16 THOSE AND BASICALLY SAID THE SAME THING, THAT IF THEY WERE PART
17 OF THE INVESTIGATION OR MATTERS THAT WERE REVIEWED IN BAY 101'S
18 MAKING ITS DECISION, THEY WOULD BE RELEVANT FOR THE PURPOSES OF
19 SHOWING WHAT BAY 101 MADE ITS DECISION ON.

20 WHETHER OR NOT THE ALLEGATIONS OR STATEMENTS CONTAINED IN
21 THE MEMOS ARE TRUE. THEY CAN'T BE CONSIDERED FOR THAT PURPOSE.

22 MR. MCMANIS: THAT'S EXACTLY WHAT YOU RULED.

23 MS. NGUYEN: SO WITH THE LIMITING INSTRUCTION THEN,
24 YOUR HONOR?

25 THE COURT: YES, BUT WERE THERE -- I THOUGHT THERE

1 WERE MORE THAN THE ONES THAT WE HAD -- THAT YOU HAD SHOWED ME
2 THIS MORNING.

3 IF I'M WRONG, THAT'S GREAT. WE CAN --

4 MS. NGUYEN: NO. THOSE ARE ALL OF THE ONES THAT WE
5 WERE TALKING ABOUT, YOUR HONOR.

6 THE COURT: OKAY. GREAT. THANK YOU.

7 MS. NGUYEN: THANK YOU.

8 THE COURT: BY THE WAY, JUST SO YOU'LL KNOW BEFORE
9 THE JURY COMES IN, ONE OR MORE OF THE JURORS HAS MENTIONED THAT
10 SHE HAS A BACK PROBLEM AND THAT'S WHY SHE'S STANDING UP AND I
11 HAD GIVEN THEM AUTHORIZATION TO DO THAT.

12 SO THEY'RE NOT BEING DISCOURTEOUS OR RUDE. THAT'S THE
13 REASON FOR HER STANDING UP.

14 MR. MCMANIS: I THOUGHT SHE HAD ENOUGH OF MY OPENING
15 STATEMENT AND WAS GETTING READY TO LEAVE.

16 THANK YOU, YOUR HONOR.

17 (JURY IN AT 10:39 A.M.)

18 MS. NGUYEN: MAY I START, YOUR HONOR?

19 THE COURT: SURE.

20 BY MS. NGUYEN:

21 Q. MR. WERNER, BEFORE WE GO TO THE DECEMBER 21ST, 2009 DATE,
22 I'D LIKE TO DRAW YOUR ATTENTION BACK TO EXHIBIT 1016 AND THE
23 LETTER IN APRIL 2007 THAT MS. DANG SENT TO H.R.

24 IN THAT LETTER SHE SAID THAT SHE REPORTED BEING HARASSED
25 BY LUCIO TO HER SUPERVISOR, JOHN ST. CROIX.

1 MR. ST. CROIX NEVER TALKED TO YOU ABOUT THAT, DID HE?

2 A. NO, HE DID NOT.

3 Q. AND IN THAT LETTER MS. DANG COMPLAINED ABOUT MR. SUAREZ
4 BREAKING INTO HER HOUSE.

5 DO YOU SEE THAT? THAT'S THE THIRD PARAGRAPH.

6 A. YES.

7 Q. WERE YOU AWARE OF THAT?

8 A. NO.

9 Q. AND SHE CONTINUED TO TALK ABOUT HOW HE TOUCHED HER, HE
10 TOLD HER HE LOVED HER, HE ASKED HER OUT TO DINNER, AND HE
11 FOLLOWED HER AFTER WORK.

12 ALL OF THOSE ARE CONSIDERED SEXUAL HARASSMENT IF IT'S
13 UNWELCOME; CORRECT?

14 A. I WOULD ASSUME SO, BOTH IN AND OUTSIDE THE WORKPLACE.

15 Q. SO WHETHER HE CONDUCTS HIMSELF LIKE THAT INSIDE OF THE
16 WORKPLACE OR WHETHER HE DOES IT OUTSIDE, IT'S STILL SEXUAL
17 HARASSMENT?

18 A. MY CONCERN WOULD BE INSIDE OF THE WORKPLACE, YES.

19 MY CONCERN WOULD BE WITH INSIDE THE WORKPLACE, YES.

20 Q. BUT IF IT HAPPENS OUTSIDE OF THE WORKPLACE, THEN IT
21 WOULDN'T BE BAY 101'S CONCERN?

22 A. IT MAY BE IF IT INTERFERED WITH HER JOB DUTIES OR IF SHE
23 HAD A RESTRAINING ORDER BASED UPON IT. SO --

24 Q. AND SHE ALSO MENTIONED OTHER WOMEN WHO HAVE HAD PROBLEMS
25 WITH MR. SUAREZ.

1 I BELIEVE THAT YOU SAID EARLIER THAT YOU DIDN'T KNOW
2 ANYTHING ABOUT THAT; CORRECT?

3 A. NO.

4 Q. AND DO YOU RECALL READING MS. EDMAN'S INVESTIGATION REPORT
5 ABOUT OTHER WOMEN WHO ALSO RECEIVED ADVANCES FROM MR. SUAREZ?

6 A. THERE WERE ALLEGATIONS THAT OTHER WOMEN HAD RECEIVED
7 ADVANCES, YES.

8 Q. AND WERE THOSE ALLEGATIONS INVESTIGATED?

9 A. I -- IF THEY WERE MADE, I'M SURE MS. EDMAN INVESTIGATED
10 THEM.

11 Q. AND THERE WAS AN INCIDENT THAT MS. DANG COMPLAINED OF ON
12 APRIL 12, 2007 IN WHICH MR. SUAREZ ACTUALLY HURT HER WITH A
13 METAL DRAWER.

14 DO YOU REMEMBER THAT?

15 A. I DON'T REMEMBER THE INCIDENT, NO.

16 Q. AND WERE YOU AWARE OF THE INCIDENT AT THE TIME?

17 A. NO.

18 Q. AND WERE YOU AWARE THAT MR. ST. CROIX AND MS. GILBERT
19 HANDLED THAT INCIDENT?

20 A. NO.

21 Q. YOU'VE BEEN TOLD ABOUT THE -- THAT INVESTIGATION AND HOW
22 THEY RESOLVED THE INCIDENT THOUGH; CORRECT?

23 A. AFTER -- DURING ITS INVESTIGATION, YES.

24 Q. AND YOU HAD NO EXPECTATION THAT THEY WOULD NOTIFY YOU
25 ABOUT WHAT THEY HAD TO DO IN RESPONSE TO MS. DANG'S APRIL 2007

1 LETTER; CORRECT?

2 A. I'M SORRY. WHAT?

3 Q. YOU DIDN'T EXPECT THEM TO LET YOU KNOW ABOUT THE
4 INVESTIGATION?

5 A. IN 2007?

6 Q. YES.

7 A. I MIGHT HAVE -- BACK IN 2007 I MIGHT HAVE EXPECTED THAT I
8 WOULD HAVE BEEN INFORMED.

9 Q. BUT YOUR TESTIMONY IS THAT YOU WERE NOT INFORMED?

10 A. I WAS NOT.

11 Q. BECAUSE MR. ST. CROIX AT THE TIME WAS THE HEAD OF THE FOOD
12 AND BEVERAGE DEPARTMENT?

13 A. YES.

14 Q. AND HE AND MS. GILBERT HAD THE AUTHORITY TO CONDUCT AN
15 INVESTIGATION AND RESOLVE THE ISSUE THEMSELVES?

16 A. YES.

17 Q. I'M GOING TO ASK YOU TO TAKE A LOOK AT THE LAST PARAGRAPH
18 ON THE FIRST PAGE GOING TO THE NEXT PAGE WHERE MS. DANG
19 COMPLAINED ABOUT ANOTHER EMPLOYEE WHO WAS CAUGHT ON CAMERA
20 PUTTING HIS HAND IN HER SHIRT POCKET.

21 DO YOU SEE THAT?

22 A. I'M SORRY? WHICH PARAGRAPH?

23 Q. IT WOULD BE THE LAST PARAGRAPH GOING OVER TO THE SECOND
24 PAGE WHERE SHE REPORTED ANOTHER EMPLOYEE WHO WAS CAUGHT ON
25 VIDEO PUTTING HIS HAND IN HER SHIRT POCKET?

1 A. YES.

2 Q. AND WERE YOU AWARE OF THAT INCIDENT?

3 A. I WAS.

4 Q. AND DID YOU WATCH THE VIDEO?

5 A. I MAY HAVE.

6 Q. AND WAS THAT COMPLAINT MADE DIRECTLY TO YOU?

7 A. NO.

8 Q. AND HOW DID YOU BECOME AWARE OF THAT INCIDENT?

9 A. EITHER THROUGH HUMAN RESOURCES OR KITCHEN MANAGEMENT.

10 Q. AND DO YOU KNOW HOW THAT WAS RESOLVED?

11 A. I BELIEVE THE OTHER EMPLOYEE WAS SUSPENDED AND PERHAPS
12 TERMINATED. I DON'T RECALL. I'M SURE HE WAS SUSPENDED.

13 Q. I'D LIKE TO MOVE ON AND ASK YOU TO TAKE A LOOK AT
14 EXHIBIT 523. IT WOULD BE IN THE BLUE BINDER.

15 PLEASE LET ME KNOW WHAT YOU'VE BEEN ABLE TO FIND IT.

16 A. I FOUND IT.

17 Q. AND I'M GOING TO ASK YOU TO TAKE A LOOK AT WHAT IS THE
18 FOURTH PAGE, AND IT HAS THE BATES NUMBER AT THE BOTTOM BAY
19 1924.

20 A. YES.

21 Q. AND YOUR NAME IS AT THE BOTTOM AS GENERAL MANAGER UNDER
22 THE INTRODUCTION; CORRECT?

23 A. YES.

24 Q. AND THIS IS THE BAY 101'S 2008 EMPLOYEE HANDBOOK; CORRECT?

25 A. AUGUST 2008.

1 MS. NGUYEN: YOUR HONOR, THE PLAINTIFF MOVES TO HAVE
2 THIS ADMITTED INTO EVIDENCE.

3 MR. McMANIS: NO OBJECTION.

4 THE COURT: ALL RIGHT. 524 IS RECEIVED -- OR 523.

5 MS. NGUYEN: 523.

6 THE COURT: SORRY.

7 (PLAINTIFF'S EXHIBIT 523 WAS RECEIVED IN EVIDENCE.)

8 BY MS. NGUYEN:

9 Q. MR. WERNER, I'M GOING TO ASK YOU TO DIRECT YOUR ATTENTION
10 TO THE PAGE WITH THE BATES NUMBER 1932 STARTING AT THE BOTTOM.

11 DO YOU SEE THE PARAGRAPH UNDER "UNLAWFUL HARASSMENT"?

12 A. YES.

13 Q. AND THAT STATES THAT "IT'S BAY 101'S COMMITMENT TO
14 PROVIDING A WORK ENVIRONMENT FREE OF UNLAWFUL HARASSMENT OF ANY
15 KIND." CORRECT?

16 A. YES.

17 Q. AND THAT IT SAYS THAT "IF YOU BELIEVE" -- AND I THINK IT
18 GOES OVER TO THE NEXT PAGE IN THE MIDDLE OF THE PAGE WHERE IT
19 SAYS, "IF YOU BELIEVE THAT YOU HAVE BEEN UNLAWFULLY HARASSED,
20 YOU HAVE TO PROVIDE A WRITTEN COMPLAINT TO YOUR OWN
21 SUPERVISOR."

22 DO YOU SEE THAT?

23 A. IT SAYS "PROVIDE A WRITTEN COMPLAINT." IT DOESN'T SAY YOU
24 HAVE TO PROVIDE.

25 Q. THAT'S THE INSTRUCTION THAT BAY 101 GAVE TO ITS

1 EMPLOYEES --

2 A. YES.

3 Q. -- ACCORDING TO THESE; CORRECT?

4 A. YES.

5 Q. AND, MR. WERNER, ISN'T IT BAY 101'S POLICY AND PROMISE TO
6 ITS EMPLOYEES THAT IT WOULD PROVIDE AN EFFECTIVE, THOROUGH, AND
7 OBJECTIVE INVESTIGATION INTO ANY COMPLAINTS OF UNLAWFUL
8 HARASSMENT?

9 A. WELL, THE PARAGRAPH STATES THAT "BAY 101 WILL IMMEDIATELY
10 UNDERTAKE AN EFFECTIVE, THOROUGH, AND OBJECTIVE INVESTIGATION
11 OF THE HARASSMENT ALLEGATIONS."

12 THAT'S BAY 101'S POLICY.

13 Q. THANK YOU.

14 DID YOU KNOW, MR. WERNER, THAT BACK IN 2006, AT THE
15 BEGINNING OF 2007, THAT MR. ST. CROIX HAD PLANNED ON
16 TERMINATING MS. DANG?

17 A. YES.

18 Q. BUT HE DIDN'T GO THROUGH WITH THAT DECISION, DID HE?

19 A. HE DID NOT.

20 Q. DO YOU KNOW WHY?

21 A. NO, I DO NOT KNOW WHY.

22 Q. NOW I WOULD LIKE TO MOVE TO THE MORNING OF DECEMBER 21ST,
23 2009.

24 MS. DANG WAS WORKING THAT MORNING AND HER SHIFT WAS TO END
25 AT 7:00 O'CLOCK THAT MORNING; CORRECT?

1 A. HER SCHEDULED SHIFT ENDED AT 7:00, YES.

2 Q. AND THAT WAS MONDAY MORNING, DECEMBER 21ST, 2009; CORRECT?

3 A. YES.

4 Q. AND SHE WAS SUPPOSED TO HAVE THAT MONDAY OFF AND THE
5 TUESDAY OFF BECAUSE THOSE WERE HER DAYS OFF; CORRECT?

6 A. WELL, AFTER SHE GOT OFF HER SHIFT SHE WAS TO BE OFF, YES.

7 Q. AND YOU WEREN'T PRESENT WHEN MR. ORTEGA HAD HIS
8 CONVERSATION WITH MS. DANG OR WITH HER HUSBAND; IS THAT RIGHT?

9 A. I WAS NOT PRESENT.

10 Q. AND SO EVERYTHING THAT YOU KNOW ABOUT WHAT HAPPENED THAT
11 MORNING CAME FROM MR. ORTEGA?

12 A. NO.

13 Q. WHO GAVE YOU THE INFORMATION ABOUT THE CONVERSATION WITH
14 MS. DANG AND MR. SUMMERS THAT MR. ORTEGA HAD WITH THEM?

15 A. WELL, FIRST I RECEIVED IT FROM VINCENT SHAW, AND THEN I
16 SUBSEQUENTLY SPOKE TO MR. ORTEGA ABOUT IT.

17 Q. AND WHAT MR. SHAW TOLD YOU WAS WHAT MR. ORTEGA HAD TOLD
18 HIM; CORRECT?

19 A. THAT'S MY BELIEF.

20 Q. BECAUSE MR. SHAW DID NOT HAVE ANY DIRECT CONVERSATION WITH
21 MS. DANG OR MR. SUMMERS; CORRECT?

22 A. HE WASN'T PRESENT FOR THE MEETING WITH -- BETWEEN
23 MR. ORTEGA OR FOR THE CONVERSATION WITH MR. SUMMERS, NO.

24 Q. AND THE ONLY THING THAT MR. SHAW TOLD YOU WAS THAT THE
25 MEETING HAD NOT TAKEN PLACE?

1 A. NO. HE TOLD ME WHAT NICK HAD TOLD HIM AND THAT THE
2 MEETING HAD NOT TAKEN PLACE.

3 Q. AND DID MR. SHAW TELL YOU THAT HE ALSO TOLD MR. ORTEGA
4 THAT THE MEETING SHOULD JUST BE RESCHEDULED?

5 A. NO.

6 Q. DID YOU KNOW THAT HE HAD TOLD MR. ORTEGA THAT?

7 MR. MCMANIS: I'M GOING TO OBJECT. IT ASSUMES
8 FACTS.

9 THE COURT: COULD YOU REPHRASE THE QUESTION?
10 BECAUSE YOUR QUESTION ASSUMES THAT THAT WAS SAID, AND THERE'S
11 NO EVIDENCE ONE WAY OR ANOTHER ON THAT.

12 BY MS. NGUYEN:

13 Q. MR. WERNER, WERE YOU AWARE THAT THE MEETING COULD HAVE
14 BEEN RESCHEDULED?

15 A. I WAS -- WAS I AWARE AT ANY TIME? I WAS AWARE THAT
16 MR. ORTEGA WAS ATTEMPTING TO RESCHEDULE THE MEETING FOR EARLIER
17 THAT DAY WHEN HE RECEIVED THE PHONE CALL FROM MR. SUMMERS.

18 Q. AND SO YOUR TESTIMONY IS THAT YOU'RE NOT AWARE THAT THERE
19 WAS AN INTENTION TO RESCHEDULE THE MEETING AFTER MS. DANG HAD
20 LEFT?

21 A. NO.

22 Q. AND WHEN YOU WENT TO BAY 101, YOU SPOKE WITH MS. GILBERT
23 ABOUT PREPARING THE TERMINATION PAPER; CORRECT?

24 A. I SPOKE TO MS. GILBERT ABOUT WHAT SHE KNEW ABOUT THE
25 CONVERSATION AND THE MEETING BETWEEN MR. ORTEGA AND MS. DANG,

1 WHETHER OR NOT THE MEETING HAD OCCURRED, AND I ASKED HER TO
2 BEGIN PREPARING TERMINATION DOCUMENTS.

3 Q. DIDN'T YOU TELL MS. GILBERT YOU WANTED THE TERMINATION
4 PAPER TO BE PREPARED RIGHT AWAY TO BE SENT TO MS. DANG THAT
5 SAME DAY?

6 A. I TOLD HER, AFTER I TALKED WITH NICK, TO COMPLETE THE
7 TERMINATION DOCUMENTATIONS, INCLUDING MS. DANG'S FINAL
8 PAYCHECK, AND TO SEND THEM TO HER IMMEDIATELY THAT DAY SO THAT
9 SHE COULD RECEIVE THEM OVERNIGHT VIA FEDEX SO SHE WOULD BE
10 INFORMED OF MY DECISION.

11 Q. AND ISN'T IT TRUE, MR. ORTEGA, THAT YOU HAD MADE THE
12 DECISION TO FIRE MS. DANG AND YOU HAD INSTRUCTED MS. GILBERT TO
13 SEND OUT THE TERMINATION PAPER EVEN BEFORE YOU SPOKE TO
14 MR. ORTEGA?

15 A. NO.

16 MR. MCMANIS: EXCUSE ME. I THINK COUNSEL MISSPOKE.
17 SHE ADDRESSED HIM AS MR. ORTEGA.

18 THE WITNESS: I'M ASSUMING YOU MEANT MR. WERNER.

19 BUT, NO, I DIDN'T MAKE MY DECISION --

20 MS. NGUYEN: I'M SORRY.

21 THE WITNESS: -- TO TELL

22 SPOKE WITH MR. ORTEGA.

23 BI MS. NGUYEN.

24 Q. DID MR. ORIEGA TELL YOU, MR. WERNER, THAT MS. DANG'S
25 HUSBAND INVITED YOU TO CALL HIM TO RESCHEDULE THE MEETING?

1 A. I DON'T THINK "INVITE" WAS THE RIGHT WORD. I WAS TOLD
2 THAT MR. SUMMERS SAID THAT, "IF MR. WERNER DOESN'T LIKE IT, HE
3 COULD CALL ME."

4 Q. AND BASED ON THE TESTIMONY, OR BASED ON THE INFORMATION
5 THAT MR. ORTEGA GAVE YOU, IT WAS MR. SUMMERS WHO SUPPOSEDLY
6 REFUSED FOR MS. DANG TO ATTEND THE MEETING?

7 A. IT WAS MY UNDERSTANDING THAT MR. SUMMERS REFUSED, ON
8 MS. DANG'S BEHALF, TO ATTEND ANY MEETING AT BAY 101 UNLESS HE
9 WAS PRESENT FOR THAT MEETING.

10 Q. MR. ORTEGA TOLD YOU, HOWEVER, THAT MS. DANG DIDN'T SAY
11 ANYTHING ABOUT REFUSING TO ATTEND THE MEETING, RIGHT?

12 A. I DON'T THINK NICK SAID ANYTHING ABOUT WHETHER SHE REFUSED
13 OR DIDN'T REFUSE TO ATTEND THE MEETING. I DON'T THINK HE SAID
14 ANYTHING ABOUT WHAT SHE SAID, PERIOD, ABOUT THE MEETING.

15 Q. AND SO THE REFUSAL TO ATTEND THE MEETING YOU DEEMED TO
16 HAVE COME FROM HER HUSBAND ON HER BEHALF?

17 A. ACTUALLY, I DEEMED THE REFUSAL TO ATTEND THE MEETING FROM
18 THE FACT THAT SHE DID NOT APPEAR AND ATTENDED THE MEETING.

19 I WAITED THAT MORNING -- I GAVE HER AN OPPORTUNITY TO,
20 EVEN THOUGH SHE HAD LEFT, TO ATTEND THE MEETING, TO COME BACK
21 AND ATTEND THE MEETING.

22 WHEN SHE WASN'T THERE, I DEEMED THAT A REFUSAL TO ATTEND
23 THE MEETING.

24 THE FACT THAT SHE DIDN'T COME WAS DEEMED A REFUSAL TO
25 ATTEND THE MEETING.

1 Q. DID YOU CALL HER TO COME BACK? YOU SAID YOU GAVE HER AN
2 OPPORTUNITY TO COME BACK.

3 A. I WAITED. I MEAN, I WAITED, IN FACT, TO SEE IF SHE DID
4 COME BACK FOR THE MEETING.

5 I ASKED MR. SHAW, MS. GILBERT, AND NICK, "WAS THERE A
6 MEETING? WAS MS. DANG THERE?"

7 THEY TOLD ME NO. I DEEMED THAT TO BE A REFUSAL TO ATTEND
8 THE MEETING.

9 Q. DID YOU KNOW THAT MR. ORTEGA EXCUSED HER TO GO HOME EARLY?

10 A. NO, I DID NOT.

11 Q. YOU DIDN'T ASK MR. ORTEGA WHAT REASON SHE HAD FOR NOT
12 ATTENDING THE MEETING?

13 A. I DID NOT.

14 Q. BECAUSE YOU DIDN'T CARE?

15 A. IT DIDN'T CROSS MY MIND THAT -- I CARED, YES. I MEAN, I
16 HAD GONE THROUGH, I THOUGHT, I MEAN, A FAIR AMOUNT OF TROUBLE
17 TO MAKE SURE THAT SHE HAD EVERY OPPORTUNITY TO SUCCEED AT
18 BAY 101.

19 AND I WAS -- SO I DID CARE.

20 Q. AND SO WHY DIDN'T YOU JUST RESCHEDULE THE MEETING AND HAVE
21 HER COME BACK?

22 A. BECAUSE I FELT THAT AT THAT TIME WHEN SHE DID -- WHEN SHE
23 DID -- AFTER HER HUSBAND CALLED AND SAID SHE WASN'T GOING TO
24 ATTEND ANY MEETING WITHOUT HIM, AND THEN SHE DIDN'T COME TO ANY
25 MEETING, SHE DIDN'T PROVIDE ME, OR AS FAR AS I KNOW ANYONE

1 ELSE, WITH ANY VALID REASON FOR NOT ATTENDING THE MEETING, THAT
2 SHE HAD QUIT HER JOB, SHE WAS INSUBORDINATE FOR NOT ATTENDING
3 THE MEETING, AND I DEEMED THAT SUFFICIENT CAUSE TO TERMINATE
4 HER.

5 Q. BUT YOU DIDN'T ASK ANYBODY WHAT REASON SHE HAD TO NOT
6 ATTEND; CORRECT?

7 A. NONE WAS GIVEN TO ME, NO.

8 Q. AND YOU DIDN'T ASK?

9 A. WELL, I THINK I MAY HAVE ASKED, BUT NO ONE GAVE ME ANY
10 REASON. I THINK I MAY HAVE ASKED. I DON'T RECALL
11 SPECIFICALLY.

12 BUT WHAT I -- BUT WHEN SHE WASN'T THERE, HER HUSBAND HAD
13 REFUSED ON HER BEHALF, OR AT LEAST A GENTLEMAN CLAIMING TO BE
14 HER HUSBAND HAD REFUSED ON HER BEHALF TO HAVE HER ATTEND THE
15 MEETING.

16 SHE DID NOT SHOW UP TO THE MEETING. I ACCEPTED THAT AS A
17 REFUSAL TO ATTEND THE MEETING.

18 Q. AND YOU DIDN'T KNOW WHO HER HUSBAND WAS, DID YOU?

19 A. I KNEW MR. SUMMERS. I DID NOT KNOW AT THAT TIME THAT THEY
20 WERE MARRIED.

21 Q. AND YOU HAD NO IDEA WHAT HIS AUTHORITY WAS TO SPEAK ON HER
22 BEHALF, DID YOU?

23 A. HE MAY HAVE BEEN HER HUSBAND. I DON'T THINK HE HAD ANY
24 AUTHORITY OTHER THAN AS HER HUSBAND, PERHAPS, TO CONVEY A
25 MESSAGE. I DON'T KNOW WHAT HIS AUTHORITY WAS.

1 I ASSUME HE HAD AUTHORITY TO REFUSE TO ATTEND THE MEETING
2 BECAUSE HE DID AND SHE DID NOT SHOW UP.

3 Q. DID YOU KNOW WHETHER ANYONE COMMUNICATED TO MS. DANG THAT
4 IF SHE DID NOT ATTEND THIS MEETING, THAT THERE WOULD BE
5 CONSEQUENCES?

6 A. I DO NOT KNOW.

7 Q. DID YOU KNOW THAT SHE HAD ONLY BEEN GIVEN THREE HOURS
8 NOTICE OF THE MEETING?

9 A. I INSTRUCTED -- I HADN'T BEEN INSTRUCTED, BUT IT WAS
10 COMMON PRACTICE FOR US AT BAY 101 TO NOT GIVE NOTICE OF
11 MEETINGS MUCH IN ADVANCE OF THE MEETING.

12 USUALLY WE DIDN'T WANT TO UPSET THE EMPLOYEE FOR THEIR
13 ENTIRE SHIFT OR OTHER EMPLOYEES, SO WE NORMALLY COMMUNICATE
14 WITH THE EMPLOYEE TOWARDS THE END OF THEIR SHIFT THAT THERE
15 WOULD BE A MEETING AT THE END OF THEIR SHIFT.

16 Q. AND --

17 A. AND THEY WERE EXPECTED TO ATTEND THAT.

18 Q. AND WHAT HAPPENS IF AN EMPLOYEE HAD ALREADY MADE OTHER
19 PLANS OR HAD OTHER OBLIGATIONS AT THE END OF THEIR SHIFT?

20 A. TYPICALLY WE MOVE THE MEETING UP SO THAT WE CAN
21 ACCOMMODATE THEM DURING THEIR SHIFT, BEFORE THEIR SHIFT IS
22 OVER.

23 Q. AND DO YOU KNOW WHETHER IT WAS DONE IN THIS CASE?

24 A. I THINK SHE REFUSED, HER HUSBAND REFUSED TO HAVE HER
25 ATTEND THE MEETING BEFORE THAT COULD BE DONE.

1 Q. AND SHE DIDN'T REFUSE, DID SHE?

2 A. SHE DIDN'T SHOW UP, SO I THINK THAT'S A REFUSAL.

3 Q. DO YOU KNOW WHETHER ANYBODY TOLD HER ABOUT THE MEETING
4 BEING MOVED UP?

5 A. I DON'T THINK THEY HAD THE OPPORTUNITY. I THINK THAT
6 DURING -- BEFORE THAT COULD EVEN BE COMMUNICATED, MY
7 UNDERSTANDING OF THE TIME WAS THAT MR. ORTEGA WAS IN THAT
8 PROCESS WHEN HE RECEIVED THE PHONE CALL FROM MR. SUMMERS SAYING
9 THAT SHE WOULDN'T BE ATTENDING ANY MEETING.

10 Q. SO MR. ORTEGA TOOK WHAT MR. SUMMERS SAID TO THEN NOT PLAN
11 THE EARLIER MEETING; CORRECT?

12 A. I GUESS SO.

13 Q. AND AT THIS MEETING, BESIDES TELLING HER ABOUT THE RESULT
14 OF THE INVESTIGATION, SHE WAS ALSO BEING DISCIPLINED BY GIVING
15 HER THE PERFORMANCE IMPROVEMENT PLAN; CORRECT?

16 A. NO.

17 Q. ISN'T PART OF THE MEMO THAT YOU PREPARED, DIDN'T IT SAY
18 THAT SHE HAS TWO WEEKS TO IMPROVE?

19 A. I WOULD -- SHE WAS BEING GIVEN A TRAINING PROGRAM. I
20 DON'T AGREE THAT THAT WAS DISCIPLINE.

21 Q. YOUR MEMO GAVE A DEADLINE, DIDN'T IT?

22 A. A DEADLINE FOR THE CONDUCT OF THE TWO WEEKS AND A
23 PERFORMANCE REVIEW AT THE END OF THE TWO WEEKS, YES.

24 Q. OKAY. SO AT THE END OF THE TWO WEEKS, HER PERFORMANCE
25 WOULD BE REVIEWED AND EVALUATED; CORRECT?

1 A. CORRECT.

2 Q. BUT AT THAT MEETING, THERE WAS NOT GOING TO BE ANY UNION
3 REP; CORRECT?

4 A. NO REQUIREMENT FOR A UNION REP.

5 Q. AND THERE WAS NOT GOING TO BE ANY INTERPRETER; RIGHT?

6 A. NO. I ASSUME IF MS. DANG HAD ASKED FOR ONE, THAT ONE
7 MIGHT HAVE BEEN PROVIDED. BUT I HADN'T PLANNED ON THEM
8 PROVIDING ONE, IF THAT'S YOUR QUESTION.

9 Q. AND THIS MEETING WAS TO TAKE PLACE AFTER SHE HAD MADE THE
10 COMPLAINT AGAINST MR. ORTEGA AND MS. GILBERT; CORRECT?

11 A. IT WAS TO EXPLAIN THE RESULTS OF THAT INVESTIGATION, YES.

12 Q. AND SO YOU WERE SENDING MS. DANG INTO A MEETING WITH THE
13 TWO INDIVIDUALS AGAINST WHOM SHE MADE THE COMPLAINTS?

14 MR. MCMANIS: OBJECTION, ARGUMENTATIVE.

15 THE COURT: I'LL ALLOW THE QUESTION.

16 THE WITNESS: THE MEETING WOULD HAVE BEEN WITH THE
17 H.R. MANAGER, HER DIRECT SUPERVISOR, AND AN EXECUTIVE,
18 INDEPENDENT EXECUTIVE WHO WAS TO CONDUCT THE MEETING AND
19 EXPLAIN TO HER WHAT WAS BEING DONE.

20 THE REASON TO HAVE THE TWO PEOPLE AND MS. GILBERT PRESENT
21 WAS BECAUSE SHE WAS THE H.R. MANAGER AND SHE WOULD BE
22 RESPONSIBLE FOR THE PAPERWORK INVOLVED IN THAT AND SETTING UP
23 THE TRAINING PROGRAM, ALONG WITH MR. ORTEGA, WHO WAS HER DIRECT
24 SUPERVISOR.

25 THE REASON FOR MR. SHAW TO BE THERE WAS TO ENSURE THAT THE

1 MEETING WAS CONDUCTED APPROPRIATELY AND THAT THERE WAS NOT ANY
2 HOSTILE ENVIRONMENT OR ATMOSPHERE CREATED FOR THE MEETING.

3 BY MS. NGUYEN:

4 Q. SO MS. DANG WAS SUPPOSED TO GO INTO THAT MEETING ALL BY
5 HERSELF WITH THE TWO INDIVIDUALS AGAINST WHOM SHE MADE THE
6 ACCUSATION AND THE ONE ADDITIONAL PERSON?

7 THE COURT: YOU'RE GETTING ARGUMENTATIVE.

8 MR. McMANIS: OBJECTION.

9 THE COURT: YEAH.

10 MS. NGUYEN: I'LL REPHRASE, YOUR HONOR.

11 THE COURT: OKAY.

12 BY MS. NGUYEN:

13 Q. MS. DANG WAS GOING INTO THE MEETING ALL BY HERSELF; RIGHT?

14 A. AS I UNDERSTOOD IT, SHE WOULD BE THERE WITH THE THREE
15 OTHER INDIVIDUALS, YES.

16 Q. AND DID THAT SEEM FAIR TO YOU?

17 A. YES.

18 MS. NGUYEN: I HAVE NO OTHER QUESTIONS RIGHT NOW FOR
19 THIS WITNESS, YOUR HONOR.

20 THE COURT: ALL RIGHT. MR. McMANIS, ANY QUESTIONS?

21 MR. McMANIS: YES, YOUR HONOR, THANK YOU.

22 **AS-ON DIRECT EXAMINATION**

23 BY MR. McMANIS:

24 Q. GOOD MORNING, MR. WERNER.

25 A. GOOD MORNING.

1 Q. I WANT TO FIND OUT A LITTLE BIT ABOUT YOUR BACKGROUND.

2 YOU HAVE TESTIFIED THAT YOU'RE CURRENTLY THE VICE
3 PRESIDENT OF BAY 101; IS THAT CORRECT?

4 A. YES.

5 Q. OKAY. ARE YOU MARRIED?

6 A. YES.

7 Q. HOW LONG HAVE YOU BEEN MARRIED?

8 A. AS OF THIS MONTH, 41 YEARS AND 8 MONTHS.

9 Q. OKAY. AND WHAT IS THE NATIONALITY OF YOUR WIFE?

10 A. VIETNAMESE.

11 Q. OKAY. AND HOW DID YOU AND MRS. WERNER MEET?

12 A. I MET HER WHILE I WAS IN THE ARMY STATIONED IN VIETNAM.

13 Q. AND WAS THAT DURING THE VIETNAM WAR?

14 A. YES.

15 Q. AND HOW LONG WERE YOU IN VIETNAM?

16 A. THREE YEARS.

17 Q. AND COULD YOU BREAK THAT DOWN IN TERMS OF ARMY SERVICE AND
18 OTHER SERVICE?

19 A. I SPENT 15 MONTHS IN THE MILITARY SERVICE, AND A LITTLE
20 OVER A YEAR AND A HALF IN CIVILIAN SERVICE AS A DEFENSE
21 CONTRACTOR.

22 Q. AND DURING WHICH OF THOSE TWO TERMS DID YOU MEET
23 MRS. WERNER?

24 A. DURING THE FIRST TERM.

25 Q. AND WHEN WERE YOU MARRIED?

1 A. AFTER I GOT OUT OF THE MILITARY IN AUGUST OF 1971.

2 Q. OKAY. DO YOU AND MRS. WARNER HAVE CHILDREN?

3 A. WE DO.

4 Q. AND HOW MANY?

5 A. THREE.

6 Q. AND WOULD YOU PLEASE GIVE US THEIR AGES AND GENDERS?

7 A. MY OLDEST CHILD IS MALE, HE'S 41; MY MIDDLE CHILD IS MALE
8 AND HE'LL BE 38 IN JULY; MY DAUGHTER IS 31 AND SHE'S OBVIOUSLY
9 A FEMALE.

10 Q. OKAY. AND DO YOU HAVE GRANDCHILDREN?

11 A. I DO.

12 Q. AND WHAT -- CAN YOU GIVE ME THE ETHNIC COMPOSITION OF THE
13 GRANDCHILDREN IF YOU WOULD, PLEASE?

14 A. WELL, I'VE GOT A TOTAL OF WHAT WE CALL SIX GRANDCHILDREN,
15 AND TWO ARE BIOLOGICAL AND THEN WE HAVE ONE ON THE WAY, AND
16 THEN I HAVE THREE THAT ARE NOT BIOLOGICAL.

17 MY BIOLOGICAL GRANDCHILDREN WOULD BE FIVE-EIGHTHS
18 VIETNAMESE, ONE-EIGHTH CHINESE, AND THE REST IS ALL AMERICAN
19 HEINZ 57, CAUCASIAN, GERMAN, ENGLISH.

20 Q. OKAY. DO YOU HAVE ANY ANIMOSITY TOWARD VIETNAMESE PEOPLE?

21 A. NO.

22 Q. OR TOWARDS WOMEN?

23 A. NO.

24 Q. AND WHAT IS YOUR EDUCATIONAL BACKGROUND?

25 A. I GRADUATED FROM HIGH SCHOOL IN PASADENA, TEXAS; I

1 ATTENDED ONE YEAR OF COLLEGE IN TOKYO, JAPAN; I HAVE AN A.A.
2 DEGREE FROM SOLANO COMMUNITY COLLEGE IN VALLEJO; I HAVE A
3 BACHELOR'S OF ARTS IN HISTORY FROM THE UNIVERSITY OF
4 WASHINGTON; A BACHELOR OF ARTS IN ECONOMICS FROM THE UNIVERSITY
5 OF WASHINGTON; I HAVE AN MBA FROM CAL STATE UNIVERSITY IN
6 SACRAMENTO; AND I HAVE A JURIS DOCTORATE LAW DEGREE FROM GEORGE
7 SCHOOL OF LAW UNIVERSITY OF PACIFIC.

8 I ATTENDED A POLICE OFFICER'S ACADEMY AT EVERGREEN
9 COLLEGE, AND I HAVE A LEVEL ONE POST CERTIFICATE AS A RESERVE
10 PEACE OFFICER.

11 Q. AND DO YOU HAVE ANY OTHER CERTIFICATES OR LICENSES?

12 A. WELL, I WOULD SAY I'M A CERTIFIED PUBLIC ACCOUNTANT; I'M A
13 LICENSED REAL ESTATE BROKER IN THE STATE OF CALIFORNIA; I HAVE
14 A COMMUNITY COLLEGE TEACHING CREDENTIAL IN BUSINESS, ARTS, AND
15 LAW.

16 I'M MISSING SOMETHING.

17 Q. WELL, LET ME ASK YOU, WITH RESPECT TO BAY 101, ARE YOU
18 REQUIRED TO BE LICENSED AT THE CARD CLUB?

19 A. YES. I AM ALSO LICENSED BY THE STATE OF CALIFORNIA AS A
20 GAMBLING ESTABLISHMENT OWNER, AND I'M LICENSED BY THE CITY OF
21 SAN JOSE TO BE A GAMBLING ESTABLISHMENT, KEY EMPLOYEE, AND
22 BUSINESS OWNER.

23 Q. AND WHAT IS INVOLVED IN THAT LICENSING PROCESS?

24 A. A PRETTY THOROUGH BACKGROUND CHECK. THE TOTAL TIME FOR
25 THE BACKGROUND CHECK FOR ME WAS THREE YEARS, OVER THREE YEARS.

1 Q. NOW, I THINK YOU TESTIFIED THAT YOU WERE FIRST FORMALLY
2 EMPLOYED IN 1995 BY BAY 101; IS THAT RIGHT?
3

4 A. YES.
5

6 Q. AND WERE YOU INVOLVED IN ITS FORMATION BEFORE THEN?
7

8 A. I WAS.
9

10 Q. AND HOW FAR BACK DID THAT PROCESS START?
11

12 A. IT STARTED IN 1988.
13

14 Q. SO SEVEN YEARS?
15

16 A. YES.
17

18 Q. ALL RIGHT. AND JUST GIVE US A LIST OF THE POSITIONS THAT
19 YOU HELD AT BAY 101, PLEASE.
20

21 A. SPECIAL ASSISTANT TO THE PRESIDENT; SPECIAL ASSISTANT TO
22 THE PRESIDENT AND GENERAL COUNSEL; SPECIAL ASSISTANT TO THE
23 PRESIDENT, GENERAL COUNSEL, AND CHIEF FINANCIAL OFFICER; CHIEF
24 FINANCIAL OFFICER; GENERAL COUNSEL; GENERAL MANAGER; AND
25 GENERAL MANAGER AND CURRENTLY VICE PRESIDENT.

26 Q. AND YOU'RE CURRENTLY THE VICE PRESIDENT; IS THAT RIGHT?
27

28 A. YES.
29

30 Q. ALL RIGHT. AND HOW LONG HAVE YOU HELD THAT POSITION?
31

32 A. SINCE JUNE OF 2010.
33

34 Q. OKAY. AND GOING BACK TO DECEMBER OF 2009 WHEN MS. DANG
35 WAS TERMINATED, WHAT WAS YOUR POSITION AT THAT TIME?
36

37 A. GENERAL MANAGER.
38

39 Q. AND WHAT WERE YOU RESPONSIBLE FOR AS GENERAL MANAGER?
40

41 A. I WAS -- AT THAT TIME I WAS RESPONSIBLE FOR THE DAY-TO-DAY
42

1 OPERATIONS OF THE CASINO AND CARD ROOM.

2 Q. AND WHO REPORTED TO YOU?

3 A. REPORTED TO ME WOULD HAVE BEEN THE CASINO MANAGER, CASINO
4 DEPARTMENT, DIRECTOR OF OPERATIONS, SECURITY, SURVEILLANCE,
5 COMPLIANCE, CAGE, ACCOUNT ROOM, HUMAN RESOURCES.

6 Q. AND WHO DO YOU REPORT TO?

7 A. I REPORT TO THE PRESIDENT OF THE COMPANY.

8 Q. AND WHO IS HE?

9 A. TIMOTHY BUMB.

10 Q. AND WHEN YOU BECAME VICE PRESIDENT, WHO BECAME GENERAL
11 MANAGER?

12 A. VINCENT SHAW.

13 Q. AND VINCENT SHAW WAS THE, I'LL CALL HIM THE NEUTRAL
14 UNINVOLVED EXECUTIVE THAT WAS GOING TO PRESIDE OVER THE MEETING
15 WITH MS. DANG ON DECEMBER 21, 2009; IS THAT RIGHT?

16 A. YES.

17 Q. AND WHAT WAS HIS TITLE AT THAT TIME?

18 A. DIRECTOR OF OPERATIONS.

19 Q. ALL RIGHT. AND HE REPORTED TO YOU?

20 A. TECHNICALLY HE REPORTED TO MARKO TRAPANI AND HE HAD A
21 DOTTED LINE TO ME.

22 Q. ALL RIGHT. FAIR ENOUGH.

23 NOW, I MENTIONED IN OPENING STATEMENT A FEW THINGS ABOUT
24 BAY 101.

25 CAN YOU TELL US WHAT IS THE BUSINESS OF BAY 101? WHAT

1 DOES IT DO?

2 A. CALIFORNIA -- IT'S A LICENSED CALIFORNIA CARD ROOM, WHICH
3 MEANS THAT IT'S LICENSED BY THE STATE OF CALIFORNIA TO CONDUCT
4 OR CONTROL OR HAVE CONTROL PLAY GAMES, AND CONTROL GAMES ARE
5 STRICTLY CARD GAMES WHICH ARE APPROVED BY THE DEPARTMENT OF
6 JUSTICE OR THE STATE OF CALIFORNIA FOR PLAY INSIDE OF A CARD
7 ROOM OR A CASINO.

8 Q. AND HOW DOES A CARD ROOM IN CALIFORNIA DIFFER FROM LIKE,
9 SAY, LAS VEGAS STYLE GAMBLING?

10 A. WELL, FIRST, IT'S NOT HOUSE BANK. PLAYERS PLAY AGAINST
11 EACH OTHER, AND IN A GAME LIKE BLACKJACK IT'S LIKE PLAYING AT
12 HOME WHERE EVERYBODY GETS A TURN TO ACT AS THE PLAYER BANKER.

13 SECONDLY, CALIFORNIA CARD ROOMS DO NOT HAVE SLOT MACHINES,
14 WE DO NOT HAVE CRAP TABLES OR ROULETTE TABLES.

15 THOSE ARE PROBABLY THE TWO MAIN DIFFERENCES.

16 Q. OKAY. CAN YOU PUT UP EXHIBIT 533, PLEASE.

17 THIS WAS SHOWN IN OPENING STATEMENT. CAN YOU IDENTIFY
18 THAT, PLEASE?

19 A. THAT'S THE FRONT EXTERIOR VIEW AT NIGHTTIME OF BAY 101.

20 MR. MCMANIS: ALL RIGHT. I'LL FORMALLY MOVE THAT
21 INTO EVIDENCE, YOUR HONOR.

22 MS. NGUYEN: NO OBJECTION, YOUR HONOR.

23 THE COURT: ALL RIGHT. 533 IS RECEIVED.

24 (DEFENDANT'S EXHIBIT 533 WAS RECEIVED IN EVIDENCE.)

25 MR. MCMANIS: THANK YOU.

1 Q. DOES THAT ACCURATELY SHOW THE FRONT OF THE CLUB?

2 A. YES, IT DOES.

3 Q. LET'S GET THE FLOOR PLAN UP, 534, PLEASE.

4 NOW, IS THIS AN ACCURATE DEPICTION OF THE FLOOR PLAN OF
5 THE INTERIOR OF THE CLUB?

6 A. IT'S THE LAYOUT THAT WE USE IN OUR HANDBOOKS AND IN OUR
7 EMERGENCY EXIT SIGNS. SO IT DEPICTS THE GENERAL LAYOUT OF THE
8 BUILDING.

9 IT'S NOT TO SCALE PER SE, BUT --

10 Q. IT'S A SCHEMATIC?

11 A. SCHEMATIC.

12 MR. MCMANIS: I'LL MOVE THAT IN, YOUR HONOR.

13 MS. NGUYEN: NO OBJECTION.

14 THE COURT: ALL RIGHT. 534 IS RECEIVED.

15 (DEFENDANT'S EXHIBIT 534 WAS RECEIVED IN EVIDENCE.)

16 BY MR. MCMANIS:

17 Q. NOW, I NOTICE TO THE RIGHT SIDE OF THIS EXHIBIT IS THE
18 WORD "POKER" AND TO THE LEFT SIDE IT'S "CAL GAMES."

19 COULD YOU TELL US, PLEASE, WHAT IS THE DIFFERENCE BETWEEN
20 THOSE TWO DESIGNATIONS?

21 A. WELL, THE TYPES OF CARD GAMES THAT ARE PLAYED ARE
22 DISTINGUISHED BY HOW THEY ARE PLAYED.

23 SO POKER GAMES ARE WHAT WE CALL RING GAMES. THEY'RE WHERE
24 EVERY PLAYER PLAYS POKER, LIKE STUD OR HOLD 'EM.

25 CALIFORNIA GAMES ARE BANKER GAMES WHERE YOU HAVE A SINGLE

1 PLAYER, OR MAYBE TWO PLAYERS OR THREE, THAT WILL ACT AS THE
2 BANK IN A SPECIFIC HAND AND THAT IS -- THOSE ARE GAMES LIKE
3 BLACKJACK, THREE CARD POKER, BACCARAT, DOUBLE HAND.

4 SO IT'S THE WAY THE GAME IS PLAYED. ONE HAS PLAYER AS
5 BANKER AND ONE IS EVERY PLAYER PLAYS AGAINST EVERY OTHER
6 PLAYER.

7 Q. NOW, ARE THE CAL GAMES SOMETIMES CALLED THE ASIAN GAMES?

8 A. THEY ARE, YES.

9 Q. AND WHAT IS THE DIFFERENCE BETWEEN CALIFORNIA GAMES AND
10 ASIAN GAMES? WHY DO WE HAVE CAL GAMES INSTEAD OF ASIAN GAMES?

11 A. WELL, I THINK IT -- IT PROBABLY UNFAIRLY DENOTES A CERTAIN
12 GROUP OF PEOPLE AS ASIANS ONLY PLAYING THOSE GAMES AND THAT'S
13 NOT TRUTHFUL. THAT'S ACTUALLY -- THOSE GAMES ARE PLAYED BY ALL
14 ETHNICITIES.

15 I THINK IN CALIFORNIA WE BELIEVE IT'S FAR MORE APPROPRIATE
16 TO CALL IT CALIFORNIA GAMES THAN ASIAN GAMES.

17 Q. BUT THE FACT THAT THERE'S A PERCEPTION THAT THOSE ARE
18 GAMES FAVORED BY ASIANS?

19 A. YES.

20 Q. ALL RIGHT. FAIR ENOUGH.

21 NOW, JUST TO COMPLETE THE HOUSEKEEPING HERE, WOULD YOU PUT
22 535 UP, PLEASE.

23 IS THIS A PHOTOGRAPH OF THE PEOPLE PLAYING THESE VARIOUS
24 GAMES AT BAY 101?

25 A. THREE SEPARATE PHOTOGRAPHS I BELIEVE, YES.

1 MR. MCMANIS: ALL RIGHT. I'LL MOVE THAT INTO
2 EVIDENCE, PLEASE.

3 MS. NGUYEN: NO OBJECTION.

4 THE COURT: 535 IS IT?

5 MR. MCMANIS: 535, YOUR HONOR, THANK YOU.

6 THE COURT: IT'S ADMITTED.

7 (DEFENDANT'S EXHIBIT 535 WAS RECEIVED IN EVIDENCE.)

8 BY MR. MCMANIS:

9 Q. AND ARE THESE ALL PHOTOGRAPHS OF POKER GAMES AS OPPOSED TO
10 THE ASIAN GAMES OR NOT?

11 A. IT APPEARS THAT THEY ARE -- IT'S HARD TO TELL THE
12 DIFFERENCE, BUT THE ONE IN THE UPPER LEFT-HAND CORNER, THAT IS
13 AN ASIAN STYLE GAME.

14 Q. OKAY.

15 A. THE ONE IN THE UPPER RIGHT-HAND CORNER APPEARS TO BE A
16 POKER GAME.

17 Q. YOU'RE NOT SURE ABOUT THE BOTTOM ONE?

18 A. I WANT TO LOOK CLOSER AT IT BECAUSE I CAN'T SEE.

19 Q. THAT'S ALL RIGHT.

20 A. BUT THEY'RE BOTH STYLES OF GAMES, I BELIEVE.

21 Q. ALL RIGHT. WOULD YOU PUT 534 BACK UP, PLEASE.

22 IN ANY EVENT, THE GAMES ARE SEGREGATED GENERALLY ON THE
23 POKER SIDE ON THE RIGHT OF THIS SCHEMATIC, AND SOMETIMES THE
24 CAL GAMES OR ASIAN GAMES ARE ON THE LEFT?

25 A. CORRECT.

1 Q. AND NOW I SEE ON THIS CHART THERE ARE TWO AREAS THAT ARE
2 DESIGNATED "CAGE." COULD YOU TELL US WHAT THE CAGE MEANS?

3 A. CAGE IS THE AREA WHERE THE CASHIERS ARE AND IT'S WHERE
4 PEOPLE WILL EXCHANGE MONEY FOR CHIPS OR CHIPS FOR MONEY, AND
5 THEY DO CHECK CASHING THERE OR CREDIT CARD TRANSACTIONS AS
6 WELL.

7 BUT THAT'S WHERE THE MONEY IS HANDLED.

8 Q. OKAY. NOW, WE HAVE HEARD THAT MS. DANG WAS ORIGINALLY A
9 COOK IN THE KITCHEN AND THAT'S HOW SHE STARTED IN 2006.

10 IS THAT THE AREA SHOWN AS THE KITCHEN AT THE TOP THERE?

11 A. YES, THAT'S THE BACK OF THE BUILDING.

12 Q. ALL RIGHT. AND THEN ONCE SHE BECAME A SERVER, WHERE WOULD
13 HER DUTIES TAKE HER ON THE FLOOR HERE?

14 A. WELL, SHE WAS A POKER SERVER, SO HER DUTIES WOULD HAVE
15 BEEN PRIMARILY ON THE POKER SIDE.

16 Q. OKAY.

17 A. BUT SHE ALSO, AS PART OF HER DUTIES, WOULD GO TO THE
18 KITCHEN TO FILL HER FOOD ORDERS OR SHE WOULD GO TO THE BACK OF
19 SUTTER'S, WHICH IS THE BAR, TO FILL HER DRINK ORDERS.

20 Q. OKAY. SO IF SHE'S GETTING FOOD FOR CUSTOMERS IN THE POKER
21 AREA HERE, SHE WOULD GET THAT FROM THE KITCHEN?

22 A. CORRECT.

23 Q. AND IF SHE'S GETTING DRINKS, SHE GETS IT FROM THE BAR
24 AREA, WHICH IS DESIGNATED SUTTER'S?

25 A. YES.

1 Q. AND THERE'S A LOT OF INTERACTION BACK AND FORTH ON THE
2 FLOOR IS THERE?

3 A. YES.

4 Q. OKAY. AND QUITE A BIT OF CASH INVOLVED IN THIS BUSINESS?

5 A. YES.

6 Q. AND THIS, I THINK YOU HAVE ALREADY TESTIFIED, IS VERY
7 REGULATED BUSINESS; IS THAT RIGHT?

8 A. A HIGHLY REGULAR PLATED BID.

9 Q. AND HOW MANY EMPLOYEES CURRENTLY WORKING AT BAY 101?

10 A. AROUND 700.

11 Q. AND WAS THAT ALSO APPROXIMATELY THE NUMBER AROUND THE FALL
12 AND WINTER OF 2009?

13 A. WE HAD PROBABLY A LITTLE MORE THAN 700 EMPLOYEES BACK
14 THEN.

15 Q. OKAY. AND HOW MANY OF THOSE EMPLOYEES IN THE FALL/WINTER
16 OF 2009 WERE INVOLVED OR WORKED IN FOOD AND BEVERAGE?

17 A. 100 TO 120.

18 Q. AND OF THOSE -- OF THAT NUMBER, HOW MANY WERE SERVERS?

19 A. APPROXIMATELY 30.

20 Q. OKAY. AND WHAT OTHER PEOPLE WOULD BE COMPREHENDED BY FOOD
21 AND BEVERAGE IN TERMS OF OCCUPATIONAL CATEGORIES BESIDES THE 30
22 SERVERS?

23 A. WE WOULD HAVE HAD THE PORTERS, KITCHEN COOKS, DELI COOKS,
24 EXPEDITER, UTILITY WORKERS, BARTENDERS.

25 Q. OKAY. WHEN YOU SAY "PORTERS," WHAT IS A PORTER?

1 A. A PORTER IS PRIMARILY LIKE A BUS PERSON. THEY WOULD CLEAN
2 UP THE TABLES, MOVE THE TRAYS IN AND OUT AND MAKE SURE THAT THE
3 FOOD STUFF IS PICKED UP AFTERWARDS, THAT THE SERVICE AREAS ARE
4 STOCKED, COFFEE IS MADE.

5 THEY MAY BRING COFFEE OR DRINKS TO CUSTOMERS OR EMPLOYEES
6 ON THE FLOOR.

7 BUT A BUS PERSON IS PROBABLY A GOOD DESCRIPTION.

8 Q. NOW, WHEN MS. DANG WAS WORKING AS A COOK, I TAKE IT THAT
9 SHE WOULD HAVE BEEN LOCATED HERE IN THE KITCHEN (INDICATING) ?

10 A. YES.

11 Q. AND WOULD THERE HAVE BEEN ANYTHING ABOUT HER DUTIES AS A
12 COOK THAT WOULD HAVE REQUIRED HER TO GO OUT ON THE FLOOR AND TO
13 WORK WITH CUSTOMERS AND THE OTHER SERVERS OUT HERE?

14 A. ACTUALLY, SHE WOULD HAVE BEEN PROHIBITED FROM GOING OUT ON
15 THE FLOOR.

16 Q. WHY IS THAT?

17 A. BECAUSE COOKS ARE NOT BADGED FOR THE -- IN ORDER TO BE ON
18 THE GAMING FLOOR, YOU NEED TO BE BADGED, HAVE A WORK PERMIT TO
19 WORK ON THE GAMING FLOOR.

20 COOKS IN THE KITCHEN TYPICALLY ARE NOT BADGED AND,
21 THEREFORE, ARE NOT ALLOWED TO BE ON THE GAMING FLOOR DURING
22 WORKING HOURS.

23 Q. OKAY. AND BY CONTRAST, ONCE SHE BECAME A SERVER, I TAKE
24 IT SHE WOULD BE OUT IN THE FLOOR QUITE A BIT, AS WELL AS GOING
25 TO THE KITCHEN AND THE BAR?

1 A. YES.

2 Q. ALL RIGHT. AND WHEN YOU TALK ABOUT BADGING, THAT IS
3 BASICALLY SOMETHING THAT THE CITY OF SAN JOSE OVERSEES?

4 A. IF -- THE CITY OVERSEES IT IN SAN JOSE. IF THE CITY
5 DOESN'T DO IT, THEN THE STATE WOULD DO IT.

6 Q. ALL RIGHT. NOW, YOU KNOW THE PLAINTIFF IN THIS CASE,
7 MS. DANG?

8 A. YES.

9 Q. ALL RIGHT. AND HOW WELL WOULD YOU SAY THAT YOU KNOW HER?

10 A. NOT WELL.

11 Q. OKAY. WERE YOU AWARE OF ANY PERFORMANCE PROBLEMS THAT SHE
12 HAD BEFORE OCTOBER 2009?

13 A. YES.

14 Q. AND HOW DID YOU BECOME AWARE OF THOSE PROBLEMS?

15 A. I HAD HAD A CONVERSATION WITH HER SUPERVISOR, OR
16 CONVERSATIONS WITH HER SUPERVISOR, JOHN ST. CROIX, PRIMARILY
17 REGARDING ATTENDANCE ISSUES AND I BELIEVE INTERRELATIONSHIP
18 WITH COWORKERS IN THE KITCHEN.

19 I'VE HAD CONVERSATIONS WITH HER SUPERVISOR, NICK ORTEGA,
20 AND THE COMPLIANT ANALYST, KATE KNAPP, REGARDING HER ISSUES
21 WITH BALANCING HER END-OF-DAY REPORTS.

22 AND I BELIEVE I HAD A CONVERSATION WITH ONE OF HER
23 COWORKERS REGARDING AN INSTANCE WHERE THEY HAD ARGUED ABOUT A
24 DRINK ORDER.

25 Q. OKAY. AND THESE WERE REPORTS THAT YOU HAD RECEIVED ABOUT

1 MS. DANG?

2 A. YES.

3 Q. OKAY. YOU MENTIONED KATE KNAPP, THE COMPLIANCE OFFICER.

4 WHAT IS THE COMPLIANCE OFFICER AND WHAT DOES MS. KNAPP DO AS
5 SUCH?

6 A. WELL, MS. KNAPP'S JOB WAS TO ENSURE THAT OUR EMPLOYEES
7 FOLLOWED BAY 101'S MINIMUM INTERNAL CONTROL PROCEDURES TO
8 ENSURE THAT WE WERE IN COMPLIANCE WITH FEDERAL, STATE, AND
9 LOCAL REGULATORY LAWS AND ORDINANCES.

10 SHE WOULD SPECIFICALLY REVIEW CASH HANDLING, END-OF-DAY
11 REPORTS, AND SOMETIMES THEIR PROCEDURES REGARDING THEIR JOBS
12 AND CASH HANDLING AS IT RELATED TO MINIMUM INTERNAL CONTROL
13 STANDARDS.

14 Q. WERE YOU AWARE, WITH RESPECT TO MS. KNAPP'S INVOLVEMENT
15 WITH MS. DANG, IF THERE HAD BEEN ANY ISSUES THERE?

16 A. YES, I WAS AWARE THAT THERE WERE ISSUES THERE.

17 Q. AND WHAT DID YOU -- TELL ME HOW YOU BECAME AWARE OF THOSE
18 ISSUES.

19 A. MS. KNAPP CAME TO ME ON I BELIEVE TWO SEPARATE OCCASIONS
20 ESSENTIALLY TO COMPLAIN ABOUT THE AMOUNT OF TIME THAT SHE WAS
21 SPENDING TRYING TO ASSIST MS. DANG IN BALANCING HER ENVELOPES
22 AND COMPLETING HER END-OF-DAY REPORTS.

23 Q. ALL RIGHT. I'M GOING TO ASK YOU TO TAKE A LOOK AT THREE
24 EXHIBITS: 548, 550, AND 551.

25 TELL ME WHEN YOU HAVE THE FIRST ONE UP, PLEASE.

1 A. I HAVE 548.

2 Q. AND WHAT IS THE DATE OF EXHIBIT 548?

3 A. JUNE 8TH, 2009.

4 Q. AND SOME FOUR MONTHS BEFORE THIS OCTOBER 2009 INCIDENT?

5 A. YES.

6 Q. AND THIS IS A -- WELL, CAN YOU IDENTIFY WHAT THIS IS FOR
7 US?

8 A. WELL, THIS IS A REPORT FROM KATE KNAPP, COMPLIANCE
9 ANALYST, REGARDING SERVERS NOT IN COMPLIANCE WITH BAY 101
10 PROCEDURES.

11 ESSENTIALLY THIS IS -- THIS HAS TO DO WITH END-OF-DAY
12 REPORTS AND MEAL REPORTS.

13 Q. BALANCING THE CASH AND WHAT HAVE YOU, AMONG OTHER THINGS?

14 A. YES.

15 Q. ALL RIGHT. AND THIS IS A REPORT FROM MS. KNAPP,
16 KATE KNAPP, TO WHOM?

17 A. NICK ORTEGA, THE F&B DIRECTOR AT THE TIME.

18 Q. AND DOES THIS REFLECT WHAT YOU HAD HEARD FROM MS. KNAPP
19 ABOUT HER CONCERNS ABOUT MS. DANG?

20 A. YES.

21 Q. ALL RIGHT.

22 I'LL MOVE THIS INTO EVIDENCE, YOUR HONOR, FOR THE LIMITED
23 PURPOSE OF WHAT INFORMATION MR. WERNER HAD BEFORE HIM AT THE
24 TIME THAT HE MADE THE DECISION TO TERMINATE MS. DANG?

25 MS. NGUYEN: NO OBJECTION WITH RESPECT TO THAT

1 LIMITED INSTRUCTION, YOUR HONOR.

2 THE COURT: OKAY. I WILL ADMIT IT.

3 IT CAN BE CONSIDERED FOR THE PURPOSES OF SHOWING WHAT
4 INFORMATION MR. WERNER --

5 HAVE YOU ESTABLISHED THAT HE SAW THIS MEMO?

6 MR. McMANIS: YES, I THINK WE HAVE. HAVE WE?

7 THE COURT: WHY DON'T YOU DO THAT TO SATISFY ME?

8 BY MR. McMANIS:

9 Q. DID YOU SEE THIS MEMORANDUM, SIR, BEFORE YOU TERMINATED --

10 A. YES.

11 THE COURT: IT CAN BE CONSIDERED FOR THE PURPOSES OF
12 SHOWING WHAT MR. WERNER SAW BEFORE HE TERMINATED MS. DANG AND
13 WHAT --

14 MR. McMANIS: THANK YOU, YOUR HONOR.

15 THE COURT: -- AND WHAT FACTS HE CONSIDERED.

16 BUT IT CANNOT BE CONSIDERED FOR WHETHER OR NOT THESE
17 ALLEGATIONS IN THE -- OR STATEMENTS IN THE REPORT ARE TRUE.

18 MR. McMANIS: THANK YOU.

19 (DEFENDANT'S EXHIBIT 548 WAS RECEIVED IN EVIDENCE.)

20 BY MR. McMANIS:

21 Q. WOULD YOU PUT THE FIRST PAGE OF EXHIBIT 548 ON THE SCREEN,
22 PLEASE.

23 CAN YOU BLOW THAT UP AT ALL, CINDY?

24 I THINK WE HAVE ALREADY ESTABLISHED THAT THIS IS A
25 MEMORANDUM FROM KATE KNAPP, THE COMPLIANCE OFFICER OR ANALYST

1 AS SHE IS DESCRIBED HERE BY MR. ORTEGA.

2 F&B DIRECTOR STANDS FOR?

3 A. FOOD AND BEVERAGE.

4 Q. AND WAS THAT THE SUPERVISOR OF MS. DANG?

5 A. YES.

6 Q. AND DATED JUNE 8, 2009.

7 AND THE FIRST CAPTION IS "SERVERS NOT IN COMPLIANCE WITH
8 BAY 101."

9 NUMBER 1 REFERS TO COPIES OF THE DROP BAGS. ARE THESE THE
10 ENVELOPES THAT -- WHERE YOU HAVE TO BALANCE YOUR RECEIPTS, YOUR
11 CASH, YOUR TICKETS, AND YOUR THIS AND THAT?

12 A. A SUMMARY, YES.

13 Q. ALL RIGHT. AND GOING TO PARAGRAPH 2, IT SAYS THE SERVER
14 NUMBER 3324, CUC DANG, SEEMS TO HAVE A PROBLEM WITH CLOSING.

15 3324, IS THAT HER EMPLOYEE NUMBER?

16 A. YES.

17 Q. AND AGAIN, THE SERVER DID NOT RESET ON THE 6-4-2009 SHIFT
18 AND THIS CAUSED A DOUBLE ENTRY IN THE FOOD AND BEVERAGE REPORT,
19 AND ALSO THERE ARE NO SERVER SALES AND THE SERVER DOES NOT PUT
20 THEM IN HER PAPERWORK CAUSING A GREAT DEAL OF WORK TO BALANCE
21 THE REPORT. HOURS OF RESEARCH HAS TO BE DONE TO FINALLY
22 CORRECT FIGURES.

23 IS THIS ALL CONSISTENT WITH VERBAL REPORTS THAT MS. KNAPP
24 HAD GIVEN YOU?

25 A. YES.

1 Q. AND THE SERVER HAS A PROBLEM ON A REGULAR BASIS, AND SO ON
2 AND SO FORTH.

3 NOW, I'D LIKE YOU TO TURN TO EXHIBIT 550.

4 EXCUSE ME. I APOLOGIZE. I MISSPOKE.

5 EXHIBIT 549, THE NEXT EXHIBIT IN ORDER.

6 AND IS THIS ANOTHER MEMORANDUM FROM MS. KNAPP TO
7 MR. ORTEGA, THE FOOD AND BEVERAGE DIRECTOR?

8 A. YES.

9 Q. AND WHAT IS THE DATE ON THAT ONE?

10 A. SEPTEMBER 14TH, 2009.

11 Q. AND DOES THERE ALSO APPEAR ON THE FACE OF THIS DOCUMENT
12 WHAT APPEARS TO BE A WRITTEN RESPONSE FROM MR. ORTEGA TO
13 MS. KNAPP?

14 A. YES.

15 Q. AND WAS THIS SOMETHING THAT YOU REVIEWED OR LOOKED AT
16 BEFORE YOU TERMINATED MS. DANG?

17 A. YES.

18 Q. ALL RIGHT. DID IT INFORM YOUR DECISION IN PART?

19 A. YES.

20 MR. McMANIS: ALL RIGHT. I'M GOING TO MOVE THIS IN,
21 AGAIN, FOR THE LIMITED PURPOSE, YOUR HONOR, TO SHOW WHAT
22 INFORMATION THAT HE HAD BEFORE HIM WHEN HE DECIDED TO TERMINATE
23 HER.

24 THE COURT: OKAY. AGAIN, IT CAN BE RECEIVED FOR
25 THAT PURPOSE, AND WHETHER THE STATEMENTS IN THE REPORT ARE TRUE

1 CANNOT BE CONSIDERED.

2 (DEFENDANT'S EXHIBIT 549 WAS RECEIVED IN EVIDENCE.)

3 MR. McMANIS: THANK YOU. WOULD YOU PUT UP, PLEASE,
4 549.

5 Q. ALL RIGHT. AGAIN, WE HAVE THE KNAPP MEMORANDUM DATED THIS
6 SEPTEMBER 14TH, 2009. THAT WOULD HAVE BEEN ABOUT A MONTH
7 BEFORE THE INCIDENT OF OCTOBER 24TH OF 2009; IS THAT RIGHT?

8 A. YES.

9 Q. AND IT'S TO NICK FROM KATE.

10 ATTACHED COPIES OF BAGS. THIS SERVER MAKES THESE KINDS OF
11 MISTAKES OFTEN. SHE FORGETS TO CARRY THE ONE IN THE TENS
12 COLUMN, THESE \$0.10 ERRORS ADD UP IN A YEAR. SHE'S NOT THE
13 ONLY ONE WITH THIS PROBLEM, BUT SHE'S MORE CONSISTENT. AND
14 PLEASE HELP ME IN TRYING TO FIND A WAY AND WHAT HAVE YOU.

15 DO YOU SEE THAT?

16 A. YES.

17 Q. NOW, "TO NICK" IS CROSSED OUT AND IT SAYS "FROM," AND THEN
18 BELOW IT'S FROM KATE IS NOW TO KATE, AND CAN YOU READ FOR THE
19 RECORD WHAT IS WRITTEN DOWN HERE AT THE BOTTOM?

20 A. "SPOKE WITH SERVER. SHE WILL BE MORE CAREFUL IN THE
21 FUTURE AND I TOLD HER IF SHE WANTS SHE CAN USE ADDING MACHINE."
22 AND THEN INITIALS.

23 Q. OKAY. AND THAT'S MR. ORTEGA?

24 A. I BELIEVE SO.

25 Q. ALL RIGHT. NOW, THIS MEMORANDUM THAT WE HAVE UP ON THE

1 SCREEN, SEPTEMBER 14TH, THAT WAS THREE MONTHS AFTER THE
2 PREVIOUS EXHIBIT, JUNE 8TH; IS THAT RIGHT?

3 A. YES.

4 Q. NOW, IF YOU'D LOOK FINALLY AT EXHIBIT 550. TELL ME WHEN
5 YOU HAVE IT BEFORE YOU.

6 A. I HAVE IT.

7 Q. AND WHAT IS THE DATE OF THAT ONE?

8 A. NOVEMBER 5TH, 2009.

9 Q. AND IS THAT ALSO FROM MS. KNAPP?

10 A. YES, IT IS.

11 Q. TO MR. ORTEGA?

12 A. IT IS.

13 Q. GENERALLY THE SAME SUBJECT MATTER?

14 A. YES.

15 Q. AND, AGAIN, WAS THAT SOMETHING THAT YOU REVIEWED BEFORE
16 YOU TERMINATED HER?

17 A. I READ IT.

18 Q. AND DID THAT INFORM YOUR DECISION IN MAKING OR DECIDING TO
19 TERMINATE HER?

20 A. IT'S PART OF IT, YES.

21 MR. MCMANIS: I'LL MOVE THIS IN, AGAIN, YOUR HONOR,
22 FOR THE LIMITED PURPOSE.

23 THE COURT: ALL RIGHT. IT CAN BE RECEIVED WITH THE
24 LIMITED INSTRUCTION.

25 MR. MCMANIS: THANK YOU.

1 (DEFENDANT'S EXHIBIT 550 WAS RECEIVED IN EVIDENCE.)

2 BY MR. MCMANIS:

3 Q. NOW, I THINK YOU SAID THAT THIS WAS ONE OF THE PROBLEMS
4 THAT YOU WERE AWARE THAT MS. DANG HAD WITH HER PERFORMANCE.

5 I WANT TO ADDRESS WHETHER SHE HAD PROBLEMS GETTING ALONG
6 WITH HER COWORKERS.

7 DO YOU HAVE THAT IN MIND?

8 A. YES.

9 Q. AND WHAT WERE YOU TOLD IN THAT REGARD?

10 A. WELL, I'D BEEN TOLD BY MR. ST. CROIX THAT SHE HAD ISSUES
11 FOLLOWING INSTRUCTIONS FROM HER SUPERVISOR, MAMA ANH, AND THAT
12 THEY SOMETIMES ARGUED AND CURSED AT EACH OTHER IN THE KITCHEN.
13 I BELIEVE THAT WAS IN 2006 OR 2007.

14 I WAS -- OR I KNEW OR HAD BEEN TOLD OF AN INCIDENT BY ONE
15 OF THE BARTENDERS THAT THEY HAD A CURSING AND SHOUTING MATCH.

16 AND THEN THERE WAS ANSWER INCIDENT DURING THE
17 INVESTIGATION THAT I BECAME AWARE OF WITH MS. ELIAS.

18 Q. NOW, YOU MENTIONED MAMA ANH. IS THIS THE SAME PERSON AS
19 ANH HUYNH?

20 A. YES.

21 Q. AND I'M GOING TO SPELL THIS. ANH BEING A-N-H AND HUYNH
22 BEING H-U-Y-N-H. IS THAT YOUR UNDERSTANDING?

23 A. YES.

24 Q. AND WHAT WAS MAMA ANH AS SHE WAS CALLED IN THE KITCHEN,
25 WHAT WAS HER JOB?

1 A. SHE WAS THE LEAD VIETNAMESE COOK.

2 Q. AND YOU HAD BEEN TOLD THAT SHE AND MS. DANG HAD GOTTEN
3 INTO AN ARGUMENT AND THERE HAD BEEN SOME CURSING AND WHAT HAVE
4 YOU?

5 A. YES.

6 Q. AND DO YOU KNOW IF MS. DANG WAS PUNISHED FOR THAT
7 INCIDENT?

8 A. I DON'T KNOW.

9 Q. AND REGARDING COWORKERS, WHILE MS. DANG WAS A FOOD SERVER,
10 HAD THERE BEEN ANY INCIDENTS THAT WERE REPORTED TO YOU OF HER
11 YELLING AT COWORKERS AND THAT TYPE OF THING?

12 A. I GUESS.

13 Q. WERE YOU AWARE THAT MS. DANG WAS SUSPENDED IN OCTOBER OF
14 2009?

15 A. I BECAME AWARE THAT SHE WAS SUSPENDED IN OCTOBER 2009.

16 Q. AND TELL ME HOW YOU BECAME AWARE.

17 A. I WAS INFORMED THAT THERE WAS GOING TO BE A MEDIATION
18 BETWEEN BAY 101 AND THE UNION BECAUSE MS. DANG HAD GRIEVED A
19 SUSPENSION.

20 Q. TAKE A LOOK, PLEASE, IF YOU WOULD AT EXHIBIT 532.

21 DO YOU HAVE THAT IN FRONT OF YOU?

22 A. I DO.

23 Q. COULD YOU IDENTIFIED WHAT THIS IS, MR. WERNER?

24 A. THIS IS A GRIEVANCE FORM FROM THE H.R. RE: LOCAL 19.

25 Q. AND WHAT IS THE DATE OF THIS FORM?

1 A. OCTOBER 8TH, 2009.

2 Q. AND DOES IT BEAR MS. DANG'S SIGNATURE AT THE BOTTOM?

3 A. IT SAYS -- I ASSUME THAT'S HER SIGNATURE.

4 Q. ALL RIGHT. AND IS THIS -- AND THIS WAS A DOCUMENT THAT
5 SHE SERVED OR HAD DELIVERED TO BAY 101; IS THAT CORRECT?

6 A. TO THE HUMAN RESOURCES DEPARTMENT, YES.

7 Q. ALL RIGHT. AND AT SOME POINT DID YOU REVIEW THAT?

8 A. I DON'T HAVE A SPECIFIC RECOLLECTION OF IT, BUT I BELIEVE
9 I DID.

10 MR. MCMANIS: I'M GOING TO MOVE THIS IN, YOUR HONOR,
11 AGAIN, NOT FOR THE TRUTH OF THE VARIOUS CLAIMS THAT MS. DANG
12 MAKES IN IT, BUT AS THE GRIEVANCE FORM THAT SHE FILED AFTER HER
13 SUSPENSION AFTER THE OCTOBER 2009 INCIDENT.

14 MS. NGUYEN: NO OBJECTION.

15 THE COURT: ALL RIGHT. 532 IS ADMITTED.

16 (DEFENDANT'S EXHIBIT 532 WAS RECEIVED IN EVIDENCE.)

17 MR. MCMANIS: WOULD YOU PUT THAT UP, PLEASE, CINDY?

18 Q. NOW, FIRST OF ALL, MR. WERNER, THIS SAYS GRIEVANCE FORM,
19 HOTEL EMPLOYEES, RESTAURANT EMPLOYEES, UNION LOCAL 19, AFL-CO.

20 IS THIS THE FORM THAT AN EMPLOYEE, IF SHE BELIEVES SHE HAS
21 A GRIEVANCE, THAT SHE CAN USE TO BRING THAT UP?

22 A. YES. I THINK SHE FILES IT AT THE UNION OFFICE THOUGH.

23 Q. OKAY. AND THIS YOU HAVE ALREADY TESTIFIED WAS FILED
24 OCTOBER 8TH, 2009.

25 THIS WAS AFTER THE INCIDENT ON OCTOBER 4TH AND THE

1 DISCIPLINE WHICH WAS IMPOSED ON MS. DANG AS A RESULT; IS THAT
2 RIGHT?

3 A. YES.

4 Q. AND YOU SAY THIS LED TO A MEDIATION ARRANGED THROUGH THE
5 AUSPICES OF THE UNION OR THE FEDERAL MEDIATOR OR THAT KIND OF
6 THING?

7 A. A LOCAL MEDIATOR, YES.

8 Q. NOW, WE CANNOT, UNDER THE LAW, GET INTO WHAT WAS SAID AT
9 THE MEDIATION, BUT DID YOU GET A REPORT ON MS. DANG'S -- WITH
10 RESPECT TO MS. DANG'S PARTICIPATION IN THAT PROCEEDING?

11 A. I DID.

12 Q. AND WHAT WERE YOU TOLD?

13 MS. NGUYEN: OBJECTION, YOUR HONOR. MEDIATION
14 PRIVILEGE.

15 MR. MCMANIS: NOT, NOT --

16 THE COURT: I THINK THE QUESTION IS NOT DIRECTED AT
17 WHAT WAS SAID DURING THE MEDIATION.

18 I THINK IT WAS DIRECTED AT WHETHER OR NOT MS. DANG HAD
19 ATTENDED THE MEDIATION, AND FOR THAT LIMITED PURPOSE I'LL LET
20 HIM ANSWER.

21 MR. MCMANIS: THANK YOU.

22 THE COURT: BUT NOT BEYOND THAT.

23 BY MR. MCMANIS:

24 Q. GO AHEAD, MR. WERNER. WHAT WERE YOU TOLD IN THAT REGARD?

25 A. I WAS TOLD THAT --

1 MS. NGUYEN: OBJECTION. HEARSAY.

2 MR. MCMANIS: IT'S NOT BEEN OFFERED FOR THE TRUTH OF
3 THE MATTER. IT'S WHAT WAS REPORTED.

4 THE COURT: I'LL OVERRULE THAT OBJECTION.

5 BY MR. MCMANIS:

6 Q. YOU CAN ANSWER THE QUESTION.

7 A. I WAS TOLD THAT MS. DANG AND MR. SUMMERS HAD LEFT THE
8 MEDIATION IN THE MIDDLE OF IT, HALFWAY THROUGH IT, AND THAT THE
9 MEDIATION WASN'T COMPLETED.

10 Q. OKAY. AND THIS GRIEVANCE FORM AND THE RESULTING MEDIATION
11 IS AN EFFORT, IS IT NOT, SIR, TO ALLOW EMPLOYEES AND MANAGEMENT
12 TO WORK OUT THEIR DIFFERENCES?

13 A. YES.

14 Q. AND APPARENTLY THAT DIDN'T HAPPEN HERE. AM I RIGHT?

15 A. YES.

16 Q. NOW, A COUPLE OF DAYS LATER --

17 AND I THINK EXHIBIT 1016 IS IN EVIDENCE. AM I CORRECT ON
18 THAT, MADAM CLERK?

19 THE CLERK: CORRECT.

20 MR. MCMANIS: ALL RIGHT. WOULD YOU PUT 1016 UP,
21 PLEASE.

22 Q. A COUPLE OF DAYS LATER YOU GET THIS LETTER DATED 10-13-09,
23 OCTOBER 13TH, 2009, ADDRESSED TO YOU.

24 AND THIS IS A VERY DETAILED LETTER WITH A LOT OF
25 ALLEGATIONS AND WHAT HAVE YOU; IS THAT RIGHT?

1 A. YES.

2 Q. ALL RIGHT. LET'S LOOK AT THE SECOND PAGE SO WE HAVE THE
3 FORMAT OF IT. IT'S A TWO-PAGE LETTER PURPORTEDLY SIGNED BY
4 CUC DANG.

5 I DON'T MEAN TO BE RACING AHEAD OF YOU HERE.

6 A. IT'S GOT HER NAME AND A SIGNATURE ABOVE IT.

7 Q. OKAY. AND THEN THE THIRD PAGE IS -- LET'S GO TO THE THIRD
8 PAGE.

9 THIS IS THE MEMORANDUM THAT SHE WAS GIVEN WHEN SHE WAS
10 SUSPENDED FOR TWO DAYS UNDER SUPPORTING -- IT SAYS SUBJECT:
11 ARGUING WITH A CUSTOMER AND A COWORKER ON THE CASINO FLOOR.

12 SUPPORTING DETAILS: ON OCTOBER 24TH AROUND MIDNIGHT YOU
13 BROUGHT THE WRONG DRINK TO A CUSTOMER. WHEN HE ASKED YOU TO
14 BRING THE CORRECT DRINK, YOU STARTED ARGUING WITH HIM, AND WHEN
15 ANOTHER SERVER CAME OVER TO HELP, YOU STARTED ARGUING WITH HER
16 ALSO.

17 UNDER SUPERVISOR'S COMMENTS: IT'S AGAINST COMPANY POLICY
18 TO ARGUE WITH THE CUSTOMER AT ANY TIME AND AGAINST POLICY TO
19 ARGUE WITH A COWORKER ON THE CASINO FLOOR IN VIEW OF CUSTOMERS,
20 AND YOU'RE BEING SUSPENDED THURSDAY AND FRIDAY, OCTOBER 8 AND
21 9, YOU WILL RETURN TO WORK ON SATURDAY, OCTOBER 10. FUTURE
22 VIOLATIONS OF THIS NATURE WILL RESULT IN MORE SEVERE
23 DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION OF YOUR
24 EMPLOYMENT.

25 DO YOU SEE THAT?

1 A. YES.

2 Q. AND THEN DOWN HERE WE HAVE HER SUPERVISOR'S SIGNATURE,
3 MR. ORTEGA, AND THE DATE.

4 A. YES.

5 Q. AND THIS WAS ONE OF THE MEMORANDA THAT SHE GRIEVED WITH
6 THE UNION; IS THAT RIGHT?

7 A. YES.

8 Q. OKAY. NOW, LET'S GO TO THE NEXT PAGE OF THE EXHIBIT.

9 THIS IS NOT A SUSPENSION, BUT A WARNING. WE HAVE HER NAME
10 AND EMPLOYEE NUMBER UP HERE; IS THAT RIGHT?

11 A. YES.

12 Q. AND THE SAME DATE, SAME SIGNATURE, MR. ORTEGA; CORRECT?

13 A. YES.

14 Q. HERE THE SUBJECT, JOB PERFORMANCE, SUPPORTING DETAILS:
15 YOU ARE NOT BALANCING YOUR ENVELOPE CORRECTLY AT THE END OF THE
16 SHIFT.

17 SUPERVISOR'S COMMENTS: I TRIED HELPING YOU WITH YOUR
18 BALANCING ON NUMEROUS OCCASIONS AND YOU STILL ARE NOT BALANCING
19 YOUR ENVELOPE CORRECTLY. IF THIS CONTINUES, YOU WILL FACE MORE
20 SEVERE DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION OF
21 YOUR EMPLOYMENT.

22 THE COMPANY MAY HAVE THE -- MAY HAVE -- MAY BE ABLE TO
23 OFFER YOU A POSITION IN THE KITCHEN OR YOU WILL NOT BE ABLE TO
24 KEEP YOUR SENIORITY.

25 IS THIS BALANCING AND THE ENVELOPE REFERENCE, IS THAT WHAT

1 THESE VARIOUS MEMORANDA FROM KATE KNAPP WERE ABOUT?

2 A. YES.

3 Q. AND THE REPORTS THAT YOU RECEIVED FROM MS. KNAPP ABOUT THE
4 PROBLEMS THAT MS. DANG WAS HAVING IN THAT AREA?

5 A. YES.

6 Q. OKAY. AND THAT WAS PART OF THE GRIEVANCE PROCEEDING AS
7 WELL, WASN'T IT?

8 A. YES.

9 Q. AND PART OF THE MEDIATION SHE WALKED OUT ON?

10 A. THAT'S MY UNDERSTANDING.

11 Q. OKAY. NOW, LET'S GO TO THE NEXT PAGE OF HER LETTER.

12 NOW, THIS IS SOMETHING THAT SHE INCLUDED IN THE LETTER,
13 WHICH I THINK IS A PAGE FROM YOUR EMPLOYEE MANUAL OR YOUR
14 HARASSMENT POLICY, SOMETHING OF THAT SORT?

15 A. I THINK IT'S A PAGE OUT OF THE WORKBOOK THAT WOULD HAVE
16 BEEN PROVIDED IN ANNUAL TRAINING ON THE SUBJECT OF WORKPLACE
17 VIOLENCE AND HARASSMENT.

18 Q. OKAY. DOES BAY 101 CONDUCT ANNUAL TRAININGS ON THOSE
19 SUBJECTS?

20 A. YES.

21 Q. FOR ALL EMPLOYEES?

22 A. YES.

23 Q. INCLUDING YOU?

24 A. YES.

25 Q. AND DO YOU KNOW, THIS EXAMPLE OF RETALIATION AND SO FORTH

1 THAT WAS CIRCLED, DO YOU KNOW HOW THAT GOT CIRCLED?

2 A. NO, I DON'T.

3 Q. BUT THAT WAS PART OF HER PACKAGE?

4 A. YES.

5 Q. AND LET'S GO TO THE NEXT PAGE.

6 NOW, THIS IS THE LETTER THAT SHE SENT TWO AND A HALF YEARS
7 EARLIER INVOLVING MR. SUAREZ AND SHE ENCLOSED THAT WITH HER
8 COMPLAINT; IS THAT RIGHT?

9 A. YES.

10 Q. AND JUST SO WE'RE CLEAR ON THIS, LET'S LOOK AT THE SECOND
11 PAGE.

12 HERE WE'VE GOT HER SIGNATURE 4-19-07.

13 LET'S GO BACK TO THE FIRST PAGE. I THINK THAT YOU
14 TESTIFIED, CORRECT ME IF I'M WRONG, THAT YOU WERE NOT AWARE OF
15 THE EARLIER MATTER INVOLVING MR. SUAREZ; IS THAT CORRECT?

16 A. I WAS NOT AWARE OF IT, NO.

17 Q. AND DID YOU LATER LEARN THAT THAT WAS HANDLED BY
18 JENNIFER GILBERT, YOUR H.R. PERSON, AND NICK ORTEGA, HER
19 SUPERVISOR?

20 A. ACTUALLY I THINK IT WAS HANDLED BY JOHN ST. CROIX AND
21 MS. GILBERT.

22 Q. I APOLOGIZE. THAT'S BEFORE MR. ST. CROIX PASSED AWAY?

23 A. YES.

24 Q. BUT IT WAS MR. ST. CROIX WHO WAS AT THAT TIME THE HEAD OF
25 FOOD AND BEVERAGE AND MS. GILBERT OF H.R.?

1 A. YES.

2 Q. BUT NOT BEING AWARE OF THAT AT THE TIME, YOU DID SEE THIS
3 LETTER BECAUSE IT WAS PART OF THE PACKAGE I TAKE IT?

4 A. YES.

5 Q. ALL RIGHT. AND IN -- WAS THIS -- ALL OF THE ALLEGATIONS
6 SHE MADE IN HER LETTER TWO AND A HALF YEARS EARLIER AND HER
7 LETTER THAT IS IN THIS EXHIBIT DATED OCTOBER 13TH, 2009, WAS
8 ALL OF THIS THE SUBJECT OF CAROLE EDMAN'S INVESTIGATION?

9 A. YES.

10 Q. AND NOW, IF I COULD HIGHLIGHT THIS PARAGRAPH STARTING WITH
11 "I BELIEVE," WITH REFERENCE TO MR. SUAREZ.

12 THIS IS MS. DANG WRITING, "I BELIEVE HE," REFERRING TO
13 SUAREZ, "HAS BEEN REPORTED BY OTHER WOMAN AT WORK, TOO, BUT
14 CONTINUED TO BEHAVE THE SAME. I HAVE HEARD COMPLAINTS FROM
15 NGA, SO, AND OTHER FEMALE WORKERS, ALL WHO WORK IN THE
16 KITCHEN."

17 DO YOU SEE THAT?

18 A. YES.

19 Q. ALL RIGHT. NOW, I'M GOING TO JUMP AHEAD JUST A MINUTE
20 HERE TO THE REPORT THAT MS. EDMAN PREPARED AND I'D LIKE YOU TO
21 TURN TO, PLEASE, TO EXHIBIT 500.

22 TELL ME WHEN YOU HAVE THAT BEFORE YOU.

23 A. OKAY.

24 Q. NOW, IN HER LETTER OF OCTOBER 13TH, 2009, EXHIBIT 1016,
25 MS. DANG DEMANDED AN INVESTIGATION OF THIS MATTER; IS THAT

1 RIGHT?

2 A. YES.

3 Q. OKAY. AND DID YOU RETAIN CAROLE EDMAN TO CONDUCT THAT
4 INVESTIGATION?

5 A. WELL, ACTUALLY, I ASKED COUNSEL TO RETAIN MS. --

6 Q. MS. KIRSCH, MY ESTEEMED PARTNER SITTING OUT THERE?

7 A. YES.

8 Q. ALL RIGHT. AND IS IT YOUR UNDERSTANDING THAT SHE ENGAGED
9 CAROLE EDMAN AND MS. EDMAN PREPARED THIS REPORT?

10 A. YES.

11 Q. AND IS EXHIBIT 500 MS. EDMAN'S REPORT?

12 A. YES.

13 Q. DID YOU RECEIVE THAT ON OR ABOUT THE DATE THAT IT'S SHOWN,
14 DECEMBER 10, 2009?

15 A. I THINK SLIGHTLY AFTER THE DATE, BUT IT COULD HAVE BEEN ON
16 THE 10TH, BUT I THINK THE 11TH.

17 Q. DID YOU READ IT?

18 A. I DID.

19 Q. CAREFULLY?

20 A. I DID.

21 Q. AND DID IT INFORM YOUR DECISION ABOUT TERMINATION IN THIS
22 CASE?

23 A. WELL, IT INFORMED MY DECISION ABOUT A MEETING WITH
24 MS. DANG TO IMPROVE HER JOB PERFORMANCE, AND THEN WHEN SHE
25 DIDN'T APPEAR FOR THAT MEETING, IT WOULD HAVE BEEN AN

1 UNDERLYING BASIS FOR MY DECISION TO TERMINATE HER.

2 Q. OKAY. VERY, VERY LAWYER-LIKE. THANK YOU.

3 IN ANY EVENT, YOU GOT THE REPORT?

4 A. YES.

5 Q. YOU READ IT?

6 A. YES.

7 Q. AND YOU CONSIDERED IT?

8 A. YES.

9 Q. AND YOU BASED THE SUBSEQUENT ACTIONS YOU TOOK WITH RESPECT
10 TO HER ON IT?

11 A. YES.

12 MR. MCMANIS: I'LL MOVE IT IN, YOUR HONOR, SUBJECT
13 TO THAT -- FOR THAT LIMITED PURPOSE.

14 THE COURT: I'LL RECEIVE IT ON THAT SAME BASIS, THAT
15 IT CAN BE CONSIDERED FOR THE PURPOSES OF EXPLAINING THE
16 INFORMATION THAT MR. --

17 MR. MCMANIS: THANK YOU, YOUR HONOR.

18 THE COURT: I'M SORRY. I DIDN'T FINISH.

19 -- THAT THE WITNESS CONSIDERED IN MAKING HIS -- OR IN
20 TAKING THE ACTION THAT HE TOOK.

21 BUT IT CANNOT BE CONSIDERED FOR WHETHER OR NOT THE
22 STATEMENTS OR ALLEGATIONS MADE IN THE REPORT ARE TRUE.

23 MR. MCMANIS: THANK YOU.

24 (DEFENDANT'S EXHIBIT 500 WAS RECEIVED IN EVIDENCE.)

25 MR. MCMANIS: WOULD YOU PUT 1016 BACK UP BEFORE WE

1 PUT UP 500, PLEASE?

2 AND WOULD YOU GO, PLEASE, TO BATES STAMP 2180, AND THEN
3 HIGHLIGHT OR BLOW UP THIS PARAGRAPH THAT WE HAD BEFORE.

4 Q. WE HAVE GONE OVER THIS. THIS WAS AN ALLEGATION THAT
5 MS. DANG MADE ABOUT MR. SUAREZ AND HE'S BEEN REPORTED BY OTHER
6 WOMEN AND CONTINUES TO BEHAVE THE SAME, AND I HAVE HEARD
7 COMPLAINTS FROM NGA, SO, AND OTHER FEMALE WORKERS, ALL OF WHO
8 WORK IN THE KITCHEN.

9 DO YOU RECALL THAT?

10 A. YES.

11 Q. AND WAS THAT ONE OF THE MATTERS THAT MS. EDMAN
12 INVESTIGATED?

13 A. YES.

14 Q. AND LET'S PUT UP THAT REPORT, PLEASE, 500.

15 I HOPE THIS IS NOT SOME SORT OF CHEAP ADVERTISEMENT FOR
16 TOSHIBA.

17 I'LL TELL YOU WHAT, YOUR HONOR. I KNOW YOU TAKE A SECOND
18 BREAK. I WONDER IF THIS MIGHT BE AN APPROPRIATE TIME WHILE SHE
19 WORKS OUT THE PROBLEM?

20 THE COURT: SURE. THAT'S FINE. WE'LL TAKE A
21 15-MINUTE RECESS.

22 MR. MCMANIS: THANK YOU.

23 (RECESS FROM 11:56 A.M. UNTIL 12:18 P.M.)

24 THE COURT: WE'RE MISSING SOMEBODY I THINK.

25 THE CLERK: OH, OKAY. I THOUGHT I HAD EVERYONE IN.

1 THE COURT: COUNSEL, SHE SHARED THE NOTE WITH YOU?

2 MR. McMANIS: I DID, AND I'LL CORRECT THAT.

3 THE COURT: OKAY.

4 MR. McMANIS: THANK YOU.

5 (PAUSE IN PROCEEDINGS.)

6 THE COURT: ALL SET? YOU MAY CONTINUE, MR. McMANIS.

7 MR. McMANIS: THANK YOU, YOUR HONOR.

8 I UNDERSTAND THAT THERE'S BEEN A REQUEST THAT WE BLOW UP
9 THESE EXHIBITS A LITTLE MORE, AND I APOLOGIZE FOR NOT HAVING
10 DONE SO AND WE'RE GOING TO FIX THAT GOING FORWARD. OKAY?

11 LET'S GO BACK TO 1016, IF YOU WOULD, PLEASE, CINDY. I'LL
12 AGAIN WANT TO LOOK AT THIS ONE.

13 THIS IS A REFERENCE IN MS. DANG'S REPORT OF APRIL 2007,
14 THAT LUCIO SUAREZ HAS BEEN REPORTED BY OTHER WOMEN AT WORK TOO,
15 AND CONTINUED TO BE THE SAME, AND I HAVE HEARD COMPLAINTS FROM
16 NGA, SO, AND OTHER FEMALE WORKERS ALL WHO WORK IN THE KITCHEN.

17 IS THAT LEGIBLE MORE OR LESS? OKAY?

18 JUROR: WHEN YOU PUT THE WHOLE ONE, THAT'S THE ONE I
19 CAN'T SEE.

20 MR. McMANIS: WE UNDERSTAND. WE'LL TRY AND FOCUS ON
21 SPECIFIC PARAGRAPHS.

22 Q. ANYWAY, THIS WAS PART OF MS. DANG'S COMPLAINT IN APRIL OF
23 2007 THAT YOU LEARNED ABOUT FOR THE FIRST TIME WHEN SHE SENT
24 YOU THE LETTER IN OCTOBER OF 2009; IS THAT RIGHT?

25 A. YES.

1 Q. ALL RIGHT. AND WAS THIS SOMETHING THAT YOU ASKED
2 MS. EDMAN TO INVESTIGATE, OR SOMEBODY ASKED MS. EDMAN TO
3 INVESTIGATE?

4 A. YES.

5 Q. ALL RIGHT. NOW LET'S GO TO HER REPORT OF HER
6 INVESTIGATION, AND THAT'S EXHIBIT 500 IN EVIDENCE WITH A
7 LIMITING INSTRUCTION.

8 CAN YOU BLOW THIS UP A LITTLE MORE, CINDY.

9 ALL RIGHT. THIS IS THE INVESTIGATION REPORT PREPARED BY
10 CAROLE EDMAN, SUBMITTED TO OUR LAW FIRM DECEMBER 10, 2009,
11 SUMMARY OF KEY FINDINGS OF INVESTIGATION.

12 LET'S TURN TO THE NEXT PAGE, PLEASE.

13 CAN YOU BLOW IT UP A LITTLE BIT?

14 NOW, THIS SUMMARIZES -- AND BY THE WAY, THESE EXHIBITS
15 WILL ALL BE COMING INTO THE JURY ROOM FOR DELIBERATIONS SO
16 YOU'LL HAVE THEM TO ACTUALLY STUDY.

17 BUT THIS SUMMARIZES THE SUMMARY OF INVESTIGATION AND
18 INTERVIEWS AND IT LISTS THE PEOPLE INTERVIEWED AND FINAL
19 SUMMARY AND CONCLUSIONS AND WHAT HAVE YOU.

20 DO YOU RECALL RECEIVING THIS REPORT FROM MS. EDMAN?

21 A. YES.

22 Q. AND LET'S TURN TO THE TWO PEOPLE NAMED BY MS. DANG AS
23 VICTIMS OF SEXUAL HARASSMENT, IF YOU WILL, BY MR. LUCIO SUAREZ.

24 ONE IS MS. NGA NGUYEN, AND THE OTHER IS SO NGUYEN.

25 CINDY, LET'S TURN TO PAGE 42 TO SEE WHAT THE INVESTIGATOR

1 REPORTED ABOUT MS. NGA NGUYEN.

2 ALL RIGHT. SO THIS WAS A FORMER EMPLOYEE NO LONGER
3 WORKING AT BAY 101.

4 LET'S GO TO THE NEXT PAGE, PLEASE.

5 AND IF YOU COULD START DOWN HERE WHERE IT SAYS
6 "MS. NGA NGUYEN STATED THAT SHE HAD HAD ONLY ONE INCIDENT WITH
7 LUCIO SUAREZ, AND EXPLAINED THAT THE ONLY COMPLAINT SHE HAD
8 FILED AGAINST MR. SUAREZ WAS RELATED TO FOOD AND MEAL TICKETS.

9 SHE STATED THAT IT HAD NOTHING TO DO WITH SEXUAL
10 HARASSMENT, NOTHING TO DO WITH HER BEING VIETNAMESE.

11 MS. NGA NGUYEN TALKED TO MR. ORTEGA ABOUT THE FOOD ISSUE
12 AND MR. ORTEGA STRAIGHTENED IT OUT WITH MR. SUAREZ.

13 MS. NGUYEN STATED THAT MR. SUAREZ DID HIS JOB AND SHE DID
14 HERS AND AFTER THAT SHE HAD NO PROBLEMS WITH MR. SUAREZ?"

15 AND LET'S GO TO THE NEXT PARAGRAPH, PLEASE. BLOW UP THE
16 FIRST FIVE LINES.

17 "WHEN THE INVESTIGATOR TOLD MS. NGA NGUYEN THAT IT HAD
18 BEEN REPORTED THAT MS. NGA NGUYEN HAD FILED SEVERAL COMPLAINTS
19 OF HARASSMENT AGAINST MR. SUAREZ, AND ASKED WHETHER SHE
20 RECALLED EVER DOING SO, MS. NGA NGUYEN REPLIED NO AND AGAIN
21 SAID NO, SHE DID NOT BELIEVE THAT SHE HAD EVER DONE THAT," AND
22 WHAT HAVE YOU.

23 AND NOW LET'S TURN TO THE OTHER PERSON THAT MS. DANG HAD
24 SAID WAS THE VICTIM OF SEXUAL HARASSMENT, AND THAT WOULD BE,
25 CINDY, MS. SO NGUYEN, NUMBER 13.

1 SHE APPARENTLY HAD BEEN HIRED BY THE COMPANY MARCH 8TH,
2 1995 AS AN ASIAN COOK. LIKES THE JOB AND NO PROBLEMS.
3 INTERVIEWED" AND SO FORTH AND SO ON.

4 GO ON TO THE NEXT PAGE, PLEASE. THE BOTTOM OF THE PAGE
5 STARTING WITH THE LAST THREE LINES, "WHEN THE INVESTIGATOR."
6 THERE YOU GO.

7 "WHEN THE INVESTIGATOR ASKED WHETHER MS. SO NGUYEN KNEW OF
8 ANY FEMALE EMPLOYEES ASKING LUCIO TO STOP BOTHERING THEM, OR
9 STOP ASKING THEM FOR DATES OR CALLING THEM MIJO OR ME-HA SHE
10 RESPONDED: 'YES, THAT'S HOW HE ADDRESSED CUC AND NO ONE ELSE.
11 HONEY-HONEY HE SAID TO CUC."

12 WOULD YOU GO TO THE NEXT PAGE?

13 MS. NGUYEN: I WOULD OBJECT TO THIS LINE, YOUR
14 HONOR. MR. MCMANIS IS TESTIFYING. THERE'S NO QUESTION FOR THE
15 WITNESS.

16 THE COURT: HE'S READING FROM THE REPORT. IF HE
17 EDITORIALIZES OR DOES ANYTHING BUT READ, I WOULD AGREE THAT'S A
18 PROBLEM.

19 BUT THE EXHIBIT IS IN EVIDENCE AND HE CAN READ FROM IT.

20 MR. MCMANIS: THANK YOU, YOUR HONOR.
21 AND LET'S HIGHLIGHT THE TWO TOP PARAGRAPHS, CINDY, PLEASE.

22 "CUC ALSO ADDRESSED HIM," MR. SUAREZ, "AS HONEY-HONEY; AND
23 SHE SAID IT TO JOSE AND TO NICK. SHE SAYS IT TO NICK AND JOSE
24 EVEN UNTIL NOW AND PREVIOUSLY TO LUCIO. NO ONE CALLS ME THAT;
25 EVERYONE CALLS ME MAMA SO; THAT'S OKAY WITH ME; NO PROBLEM.

1 "WHEN ASKED WHETHER SHE KNEW OF ANYONE WHO WAS AFRAID OF
2 LUCIO IN THE LAST 3 YEARS, SHE LAUGHED AND SAID, 'NO - THEY
3 MIGHT DISLIKE HIM BUT WOULDN'T BE AFRAID OF HIM.' WHEN ASKED
4 WHY THEY MIGHT DISLIKE HIM, SHE STATED, 'HE'S VERY SERIOUS
5 ABOUT HIS COOKING AND HE WANTS OTHER PEOPLE TO FOLLOW SUIT.'
6 HE WANTS PEOPLE TO COOK THE WAY HE WANTS. IT'S RIGHT. HE'S
7 FOLLOWING THE RULES. MS. SO NGUYEN STATED SHE'S NEVER HEARD
8 ANYONE COMPLAIN ABOUT HEARING LUCIO USE DIRTY WORDS AND HAS NOT
9 HEARD THEM HERSELF."

10 Q. MY QUESTION, MR. WERNER, DID YOU READ THESE REPORTS OF THE
11 INVESTIGATOR AS TO MS. NGA NGUYEN AND MS. SO NGUYEN?

12 A. YES.

13 Q. AND DID YOU SEE ANYTHING IN THOSE REPORTS THAT SUPPORTED
14 THE CLAIM THAT MS. DANG HAD MADE ABOUT THEM BEING VICTIMS OF
15 SEXUAL HARASSMENT?

16 A. NO.

17 Q. NOW, WHILE WE'RE ON THIS REPORT, I'D LIKE YOU TO TURN,
18 PLEASE, CINDY TO PAGE 53 WHERE WE HAVE THE INTERVIEW OF
19 MS. NGA.

20 AND HERE WE -- YEAH, HERE WE GO.

21 THIS IS MS. NG WHO WAS INTERVIEWED BY THE INVESTIGATOR,
22 ALSO KNOWN AS ELLIS NG, HIRED ON JANUARY 15TH, 1997 AS A SERVER
23 AND STATED "SHE HAS ALSO BEEN ASKED TO TRAIN NEW FOOD SERVERS
24 FOR A NUMBER OF YEARS AND ESTIMATED THAT SHE PROBABLY HAS
25 TRAINED 90 PERCENT OF THE CURRENT SERVERS."

1 AND THEN IF WE GO TO THE NEXT PAGE, THIS IS UNDER THE
2 HEADING --

3 CAN WE BLOW THAT UP SO WE CAN GETTING THE HEADING?

4 IT'S -- I'M SORRY. IT'S MS. DANG'S CLAIM OF NEGATIVE
5 EVALUATIONS?

6 IT'S ABOUT IN THE MIDDLE OF THE PAGE.

7 MS. MCCLELLAN: JUST THE PARAGRAPH; CORRECT?

8 MR. McMANIS: JUST THE PARAGRAPH.

9 Q. THIS IS THE HEADING "MS. DANG'S CLAIM OF NEGATIVE
10 EVALUATIONS RELATED TO BALANCING ENVELOPES."

11 AND MS. NG STATED THAT BALANCING ENVELOPES IS VERY
12 STRAIGHTFORWARD AND THAT IF BALANCES ARE OFF, A REPORT COMES
13 FROM MS. KNAPP. MS. NG CONFIRMED THAT THIS IS NOT A PROBLEM
14 THAT COMES FROM MR. ORTEGA."

15 AND THEN I WANT TO GO DOWN FIVE LINES WHERE MS. NG SAYS
16 SHE HAS TRAINED FOOD SERVERS OF ALL NATIONALITIES.

17 HIGHLIGHT "MS. NG STATED SHE HAS TRAINED SERVERS OF ALL
18 NATIONALITIES" TO THE END OF THE PARAGRAPH, PLEASE. YEAH.

19 MR. WERNER, AGAIN, FROM EXHIBIT 500, QUOTE, "MS. NG HAS
20 STATED THAT SHE HAS TRAINED FOOD SERVERS OF ALL DIFFERENT
21 NATIONALITIES; THAT SHE HAD A REALLY DIFFICULT TIME TRAINING
22 MS. DANG; AND THAT MS. DANG WAS NOT READY TO GO ON THE FLOOR
23 AFTER 2 WEEKS OF TRAINING FOR MANY REASONS. MS. NG GAVE HER
24 OPINIONS THAT SOME OF THE REASONS WERE THAT MS. DANG PRETENDS
25 SHE UNDERSTANDS BUT DOESN'T; THAT MS. DANG DOES NOT LISTEN TO

1 THE TRAINER OR THE CUSTOMERS; THAT MS. DANG DID NOT WRITE
2 THINGS DOWN AS MS. NG SUGGESTED SO THAT MS. DANG COULD BRING
3 QUESTIONS TO MS. NG BEFORE MAKING MISTAKES; THAT MS. DANG
4 BROUGHT CUSTOMERS THE WRONG ORDERS BECAUSE OF THIS; THAT
5 MS. DANG QUIT TRYING TO LEARN THE BAR DRINKS WHEN GIVEN THE
6 CHANCE TO DO SO; THAT MS. DANG DOESN'T SAY WHEN SHE DOESN'T
7 UNDERSTAND WHAT A CUSTOMER WANTS; AND THAT MS. DANG DID NOT GET
8 ALONG WELL WITH HER COWORKERS.

9 "MS. NG GAVE HER PERCEPTION THAT MS. DANG HAD MORE VOIDS
10 THAN ANYONE ELSE HAD HAD IN THE PAST AND THAT IT TOOK LONGER
11 FOR MS. DANG TO LEARN THIS JOB THAN ANYONE IN ELSE IN THE PAST.
12 MS. NG FELT THAT OTHER FOOD SERVERS HAD TRIED TO HELP MS. DANG
13 WHEN ASKED. MS. NG GAVE TWO EXAMPLES OF THE PROBLEMS STILL
14 OCCURRING.

15 MS. NG GAVE TWO EXAMPLES OF PROBLEMS STILL OCCURRING AND
16 THAT MS. DANG HAD HAD ANOTHER INCIDENT WITH A BARTENDER
17 RECENTLY IN FRONT OF CUSTOMERS RELATING TO ORDERING JACK
18 DANIELS WITH A MARGARITA AND WHEN SHE SHOULD KNOW BY NOW THAT
19 TEQUILA GOES INTO A MARGARITA, NOT JACK DANIELS, AND ANOTHER
20 SITUATION WITH ANOTHER EMPLOYEE WAS RELATED TO ASKING A PORTER
21 TO ORDER ALCOHOL AFTER THE LEGAL CUT OFF TIME."

22 DID YOU READ THAT PASSAGE, MR. ORTEGA?

23 A. YES, I DID.

24 Q. DID YOU DO THAT IN MAKING YOUR DECISION TO TERMINATE THIS
25 EMPLOYEE?

1 A. YES, I DID.

2 Q. I'D LIKE TO HAVE YOU TAKE A LOOK AT EXHIBIT 504, PLEASE.

3 TELL ME WHEN YOU'VE GOT IT.

4 A. I HAVE IT.

5 Q. ALL RIGHT. LET'S IDENTIFY THIS.

6 FIRST OF ALL, THIS IS A REPORT FROM LILIBETH LICONA TO
7 NICK ORTEGA, THE FOOD AND BEVERAGE DIRECTOR; IS THAT RIGHT?

8 A. YES.

9 Q. AND THIS IS DATED SEPTEMBER 20TH, 2009?

10 A. YES.

11 Q. AND SHORTLY BEFORE YOU TERMINATED MS. DANG?

12 A. YES.

13 Q. AND HAD YOU READ AND CONSIDERED THIS REPORT BEFORE YOU
14 TERMINATED HER?

15 A. YES.

16 Q. AND BASED YOUR ACTIONS IN PART ON THIS?

17 A. YES.

18 MR. McMANIS: ALL RIGHT. MOVE THAT IN EVIDENCE,
19 AGAIN, WITH THE LIMITING INSTRUCTION, YOUR HONOR.

20 THE COURT: ALL RIGHT. IT CAN BE RECEIVED FOR
21 INDICATING THE INFORMATION THAT MR. WERNER HAD AT THE TIME HE
22 MADE THE DECISION AND TOOK THE ACTION, AND IT CANNOT BE
23 CONSIDERED FOR THE TRUTH OF THE STATEMENTS IN THEM, IN THE
24 LETTER.

25 (DEFENDANT'S EXHIBIT 504 WAS RECEIVED IN EVIDENCE.)

1 MR. MCMANIS: WOULD YOU PUT THAT UP, CINDY?

2 Q. NOW, WE SAW THIS IS A LETTER DATED DECEMBER 17TH, 2009
3 FROM MR. ORTEGA FROM LILIBETH LICONA.

4 IS SHE ALSO KNOWN AS BETH?

5 A. YES.

6 Q. AND WHAT IS BETH LICONA'S JOB AT BAY 101?

7 A. SHE'S A BARTENDER.

8 Q. AND MS. LICONA REPORTED TO MR. ORTEGA ON DECEMBER 17TH,
9 2009, "I'M WRITING THIS LETTER TO JUST INFORM YOU OF WHAT
10 HAPPENED SOME TIME LAST MONTH AT APPROXIMATELY PAST 11:00 P.M.
11 BETWEEN ME AND CUC DANG, 3224.

12 "SHE HAD A TICKET FOR A VIRGIN MARGARITA THAT NIGHT AND
13 THEN MADE ANOTHER ONE STATING 'SEE ME.' I DID NOT MAKE HER
14 ORDER BECAUSE I WAS WAITING FOR HER, AND WHEN SHE CAME SHE SAID
15 THAT SHE WILL ORDER THE REGULAR MARGARITA INSTEAD OF THE
16 PREVIOUS ORDER.

17 "I TOLD HER THAT THE REGULAR HAS A DIFFERENT PRICE THAN
18 THE VIRGIN ONE. SHE IN EXISTED THAT IT'S THE SAME, BUT I TOLD
19 HER THAT IT'S NOT.

20 'SHE WENT TO THE KITCHEN WITHOUT CLARIFYING WHAT MARGARITA
21 SHE WANTED, AND WHEN SHE CAME BACK, SHE WAS MAD BECAUSE I DID
22 NOT MAKE HER ORDER.

23 'I TOLD HER TO MAKE A TICKET FIRST FOR THE REGULAR
24 MARGARITA SO I COULD MAKE ONE INSTEAD OF THE VIRGIN MARGARITA.

25 "I CALLED THE SHIFT MANAGER MIKE WILSON AND TOLD HIM ABOUT

1 HER ORDER. I EXPLAINED TO THE SHIFT MANAGER ABOUT THE MATTER
2 AND SHE TOLD MR. WILSON THAT I AM A LIAR.

3 "I WAS LOOKING FOR THE TICKET THAT SHE MADE, BUT I CANNOT
4 FIND IT ANYWHERE. I PRESUMED SHE HAD IT WITH HER IF I'M NOT
5 MISTAKEN OR SHE DESTROYED IT.

6 "I JUST WANT TO EXPLAIN MY SIDE REGARDING THIS MATTER.

7 SINCERELY, LILIBETH LICONA, 3076."

8 ALL RIGHT. NOW, IT'S BEEN SUGGESTED, MR. WERNER, THAT
9 AFTER THE INCIDENT OF OCTOBER 4, 2009, THAT BAY 101 JUST JUMPED
10 ON HER WITHOUT AN INVESTIGATION AND WHAT HAVE YOU.

11 AND I'D LIKE YOU NOW, PLEASE, TO TURN TO EXHIBIT 505, IF
12 YOU WOULD.

13 A. YES.

14 Q. AND CAN YOU IDENTIFY THAT, PLEASE?

15 A. THIS WOULD BE THE STATEMENT OF LINDA ELIAS REGARDING THE
16 INCIDENT THAT OCCURRED ON OCTOBER 4TH AND 5TH.

17 Q. ALL RIGHT. BEFORE WE GET INTO THIS STATEMENT, I WANT TO
18 SET THE STAGE.

19 CAN YOU PUT UP THAT SCREEN SHOT UP ON THE SECURITY VIDEO,
20 PLEASE?

21 DO WE HAVE THIS MARKED AS AN EXHIBIT. IT'S PART OF
22 ANOTHER EXHIBIT, I THINK.

23 MS. MCCLELLAN: IT'S ONLY BEEN USED -- NEXT IN ORDER
24 WOULD BE 560.

25 MR. MCMANIS: I'M GOING TO ASK THAT THIS BE MARKED,

1 YOUR HONOR, 560 FOR IDENTIFICATION.

2 I'LL HAVE THE WITNESS IDENTIFY IT.

3 MS. NGUYEN: NO OBJECTION.

4 THE COURT: JUST A SCREEN SHOT OF THE ONE?

5 MR. MCMANIS: YES. I DON'T GET DOWN HERE THAT
6 OFTEN. DO I HAVE TO GIVE THIS TO THE CLERK TO MARK OR IS IT
7 SUFFICIENT --

8 THE COURT: YOU CAN MARK IT.

9 MR. MCMANIS: I MAY MARK IT?

10 THE COURT: YES.

11 MR. MCMANIS: OH, THANK YOU.

12 WHAT WAS THAT NUMBER AGAIN?

13 MS. MCCLELLAN: 560.

14 MR. MCMANIS: 560, OKAY.

15 (DEFENDANT'S EXHIBIT 560 WAS MARKED FOR IDENTIFICATION.)

16 MR. MCMANIS: MAY I APPROACH THE WITNESS, YOUR
17 HONOR?

18 THE COURT: YES.

19 BY MR. MCMANIS:

20 Q. I'M GOING TO SHOW YOU EXHIBIT 560 AND IT'S BEEN MARKED FOR
21 IDENTIFICATION.

22 AND COULD YOU TELL ME FROM LOOKING AT THE LEGEND FROM THE
23 BOTTOM OF THE PICTURE AND THE PICTURE GENERALLY WHAT THIS IS.

24 A. THIS IS AN OVERVIEW OF THE -- FROM OUR SURVEILLANCE SYSTEM
25 OF THE PORTION OF APPROXIMATELY HALF OF THE POKER FLOOR FACING

1 FROM THE MAIN ENTRANCE, FROM WHAT WE CALL THE POKER ENTRANCE,
2 AND IT SHOWS PRIMARILY THE CAGE, THE BOARD, AND THE HIGH LIMIT
3 SECTION OF OUR POKER ROOM.

4 Q. OKAY. JUST -- LET'S GO BACK, IF I COULD QUICKLY, TO THAT
5 SCHEMATIC.

6 SO WHAT WE LOOKED AT WITH THAT EXHIBIT, 560 FOR
7 IDENTIFICATION, IS A PORTION OF THIS POKER AREA; IS THAT RIGHT?

8 A. YES.

9 Q. ALL RIGHT. IF YOU WOULD GO BACK TO 560?

10 IS THIS -- WHAT CAN YOU TELL US FROM THE LEGEND AT THE
11 BOTTOM OF THAT PICTURE?

12 A. I CAN -- FROM THIS I CAN TELL YOU WHICH SURVEILLANCE
13 SERVER IT'S ON, WHICH CAMERA IS BEING USED. I CAN TELL YOU
14 THAT IT'S ON THE POKER FLOOR. I CAN TELL YOU THAT IT'S THE
15 DATE AND TIME. I CAN TELL YOU ALSO WHAT THE FRAME RATE OR
16 IMAGES PER SECOND IS AND THE AMOUNT OF STORAGE THAT IT IS
17 USING.

18 Q. HOW MANY SERVERS OR SURVEILLANCE CAMERAS DOES THE CLUB
19 HAVE ON THE FLOOR AS A PART OF ITS OPERATION?

20 A. WELL, WE PREFER TO KEEP THE TOTAL NUMBER CONFIDENTIAL, BUT
21 WE HAVE --

22 Q. WELL, I DON'T WANT TO INTRUDE. IS IT MORE THAN ONE?

23 A. IT'S OVER 100.

24 Q. OVER 100?

25 A. MORE THAN 200.

1 Q. OKAY. NOW, JUST SO THAT WE DON'T THINK THAT I HAVE BIG
2 BROTHER HERE ON THE STAND OR SOMETHING, COULD YOU TELL ME,
3 PLEASE, WHY IS IT THAT YOU HAVE ALL OF THESE 200 PLUS CAMERAS
4 SURVEILLING ALL OF THESE AREAS OF THE CLUB?

5 A. WE'RE REQUIRED BY THE STATE OF CALIFORNIA AND THE CITY OF
6 SAN JOSE TO HAVE CAMERA COVERAGE OF ALL PORTIONS OF THE CARD
7 ROOM, ALL PORTIONS OF THE CARD ROOM.

8 Q. ALL RIGHT.

9 A. AND SPECIFIC REQUIREMENTS FOR THE GAMING FLOOR.

10 Q. SO IF YOU WANT TO HAVE A CARD CLUB IN SAN JOSE, YOU HAVE
11 TO HAVE THIS SURVEILLANCE SYSTEM?

12 A. THAT'S CORRECT.

13 Q. ALL RIGHT. AND DO THE POLICE OCCASIONALLY WANT TO SEE THE
14 FILM?

15 A. NOT ONLY DO THEY WANT TO SEE IT, THEY HAVE THEIR OWN
16 PORTION OF OUR SYSTEM AT THE POLICE STATION IN A VIEWING
17 STATION SEPARATE JUST FOR THEM AT OUR CARD ROOM.

18 Q. AND SO SOME OFFICER DOWN AT THE SAN JOSE POLICE DEPARTMENT
19 HEADQUARTERS COULD ACTUALLY VIEW THAT IF HE WANTED?

20 A. YES.

21 Q. ALL RIGHT. AND I THINK YOU TOLD US THAT YOU CAN TELL THE
22 DATE OF THIS PARTICULAR SHOT.

23 WHAT IS THE DATE?

24 A. IT'S THE 4TH OF OCTOBER, 2009.

25 Q. AND WHAT IS THE TIME?

1 A. THE TIME IS 23:48 MINUTES AND 56 SECONDS. SO 11:48 P.M.
2 ROUGHLY.

3 Q. AND 56 SECONDS. I GUESS IT'S ALMOST 11:49?

4 A. ALMOST.

5 Q. ELEVEN MINUTES BEFORE MIDNIGHT?

6 A. ROUGHLY.

7 Q. ALL RIGHT. AND CAN YOU TELL US IF THIS WAS PART OF THE
8 SURVEILLANCE VIDEO THAT WAS EXAMINED IN DISCIPLINING MS. DANG?

9 A. YES, IT WAS.

10 MR. MCMANIS: ALL RIGHT. I'LL MOVE THAT INTO
11 EVIDENCE, PLEASE.

12 THE COURT: I'M SORRY. THE SCREEN SHOT?

13 MR. MCMANIS: YES, 560.

14 THE COURT: ALL RIGHT. IT'S ADMITTED.

15 (DEFENDANT'S EXHIBIT 560 WAS RECEIVED IN EVIDENCE.)

16 MR. MCMANIS: THANK YOU.

17 Q. NOW, WHEN YOU REVIEWED THE INCIDENT OF OCTOBER 4TH, '09,
18 THE DISCIPLINE, THE SUSPENSION, MINDFUL OF THE MEDIATION THAT
19 THE UNION HAD ARRANGED WITH THE FEDERAL MEDIATOR, ET CETERA, ET
20 CETERA, DID YOU DETERMINE WHETHER YOUR MANAGEMENT PEOPLE HAD,
21 IN FACT, LOOKED AT THIS VIDEO?

22 A. YES.

23 Q. AND WHO SPECIFICALLY EXAMINED IT?

24 A. IT WOULD HAVE BEEN NICK ORTEGA AND JENNIFER GILBERT, AND
25 SURVEILLANCE PERSONNEL AS WELL.

1 Q. ALL RIGHT. I'M NOW GOING TO ASK -- AND DID YOU DETERMINE
2 THAT THEY TOOK STATEMENTS, OR GOT STATEMENTS I SHOULD SAY, FROM
3 THE INVOLVED PEOPLE?

4 A. YES.

5 Q. ALL RIGHT. AND I'M GOING TO ASK YOU, PLEASE, TO LOOK AT
6 EXHIBIT 505.

7 A. OKAY.

8 Q. AND CAN YOU IDENTIFY THIS STATEMENT FOR THE RECORD,
9 PLEASE.

10 A. THIS WOULD BE MS. ELIAS'S, LINDA ELIAS'S STATEMENT
11 REGARDING HER INTERACTION WITH -- OR REGARDING THE INCIDENT.

12 Q. ALL RIGHT. AND WHAT IS THE DATE OF THAT?

13 A. OCTOBER 6TH, 2009.

14 Q. AND WAS THAT SOMETHING THAT YOU REVIEWED AND CONSIDERED
15 BEFORE TERMINATING MS. DANG?

16 A. YES.

17 MR. MCMANIS: I'LL MOVE THAT IN EVIDENCE WITH THAT
18 LIMITED PURPOSE THAT WE HAVE HAD, YOUR HONOR.

19 THE COURT: ALL RIGHT. AGAIN, IT CAN BE CONSIDERED
20 FOR INFORMATION THAT MR. WERNER HAD AT THE TIME HE MADE HIS
21 DECISIONS.

22 IT CANNOT BE CONSIDERED FOR WHETHER OR NOT THE STATEMENTS
23 MADE BY MS. ELIAS ARE TRUE.

24 (DEFENDANT'S EXHIBIT 505 WAS RECEIVED IN EVIDENCE.)

25 MR. MCMANIS: WOULD YOU PUT UP EXHIBIT 505, PLEASE,

1 SUBJECT TO THAT LIMITATION, AND BLOW IT UP IF YOU WOULD,
2 PLEASE, CINDY?

3 Q. ALL RIGHT. NOW, AGAIN, JUST SO WE'RE CLEAR, LINDA ELIAS,
4 3332, THAT'S HER EMPLOYEE NUMBER?

5 A. YES.

6 Q. AND IT'S DATED OCTOBER 6TH, 2009, A COUPLE OF DAYS AFTER
7 THE INCIDENT?

8 A. WELL, YES.

9 Q. OKAY. AND IT APPEARS TO BE SIGNED?

10 A. YES.

11 Q. IT REFERS TO OCTOBER 4TH, 2009. AROUND MIDNIGHT ON TABLE
12 31, SEAT 1, A CUSTOMER CALLED ME OVER AND HE WANTED TO ORDER A
13 REMY WITH A SODA BACK, AND WHEN I RETURNED WITH HIS DRINK HE
14 THANKED ME BECAUSE CUC HAD SERVED HIM THE WRONG DRINK, A DOUBLE
15 JIM BEAM WHEN HE WANTED A REMY. I ASSURED HIM THAT I WOULD
16 RETURN THE DRINK AND GIVE HIM HIS MONEY BACK.

17 I WENT UP TO CUC AND TOLD HER THE PROBLEM AND IT WAS OKAY
18 TO KEEP THE TIP AND RETURNED THE MONEY FOR THE DRINK TO HIM.
19 SHE WAS VERY UPSET AND STARTED YELLING AT ME IN THE KITCHEN.

20 AFTER I RETURNED THE MONEY, CUC WENT TO THE CUSTOMER AND
21 CREATED A SCENE. SHE TOLD HIM IT WAS HIS FAULT AND SHE SHOWED
22 HIM THE LIST OF DRINKS THAT SHE HAD HANDWRITTEN.

23 I THEN APPROACHED CUC AND THE CUSTOMER AND ASSURED HIM
24 THAT EVERYTHING WAS TAKEN CARE OF.

25 SHE THEN TURNED AND BEGAN TO YELL AT ME ON THE FLOOR.

1 ARLENE FONTILLAS, 881, WAS PLAYING ON THE NEXT TABLE AND
2 WAS WITNESS TO THE INCIDENT.

3 IS THAT HER NUMBER, 881, ARLENE FONTILLAS?

4 A. I BELIEVE IT IS.

5 Q. AND WHAT IS HER JOB AT BAY 101?

6 A. SHE'S ALSO A FOOD SERVER AND WAS A TRAINER AS WELL.

7 Q. OKAY. AND WHEN IT SAYS IS THAT ARLENE FONTILLAS WAS
8 PLAYING ON THE NEXT TABLE AND WAS WITNESS TO THE INCIDENT, ARE
9 STAFF PERMITTED TO PLAY CARDS AT THE CLUB?

10 A. WHEN THEY'RE OFF DUTY.

11 Q. ALL RIGHT. SO WHEN THEY FINISH THEIR SHIFT, THEY CAN SIT
12 DOWN AND PLAY THEMSELVES?

13 A. FOR A WHILE, YES.

14 Q. ALL RIGHT. CUC WENT TO THE KITCHEN AND STARTED YELLING AT
15 KEN MEAKCHAROON -- I DON'T KNOW IF THIS IS MR. MENUDO OR NOT --
16 BUT KEN MEAKCHAROON, THAT'S HIS NUMBER, 2833?

17 A. I BELIEVE SO.

18 Q. KEN TOLD HER IF SHE DIDN'T QUIT YELLING HE WOULD SEND HER
19 HOME. I TOLD KEN SHE WAS YELLING ON THE FLOOR. SHE CONTINUED
20 YELLING AT KEN AND SO FORTH AND SO ON.

21 ALL I WAS TRYING TO DO WAS DIFFUSE THE SITUATION.

22 ALL RIGHT. I'D LIKE YOU TO NOW TURN TO EXHIBIT 506,
23 PLEASE.

24 A. 605?

25 Q. 506. DO YOU HAVE THAT?

1 A. YES.

2 Q. ALL RIGHT. JUST AGAIN TO IDENTIFY IT, IS THIS A
3 HANDWRITTEN STATEMENT?

4 A. YES.

5 Q. AND DATED?

6 A. OCTOBER 7TH, 2009.

7 Q. AND SUBMITTED BY WHOM?

8 A. ARLENE FONTILLAS, ID 881.

9 Q. ALL RIGHT. AND THIS IS THE PERSON REFERENCED IN
10 LINDA ELIAS'S STATEMENT?

11 A. YES.

12 Q. AND DID YOU RECEIVE AND READ THIS BEFORE TERMINATING
13 MS. DANG?

14 A. I DID.

15 Q. AND DID THAT INFORM YOUR DECISION IN DOING SO?

16 A. IT HELPED.

17 MR. MCMANIS: ALL RIGHT. I'M GOING TO MOVE THIS IN
18 ALSO FOR THE LIMITED PURPOSE, YOUR HONOR.

19 THE COURT: ALL RIGHT. 506 MAY BE RECEIVED AGAIN
20 WITH THE SAME LIMITING INSTRUCTION.

21 (DEFENDANT'S EXHIBIT 506 WAS RECEIVED IN EVIDENCE.)

22 BY MR. MCMANIS:

23 Q. OKAY. AND IF YOU WOULD LOOK AT EXHIBIT 528, PLEASE. TELL
24 ME WHEN YOU HAVE IT BEFORE YOU.

25 A. YES.

1 Q. IS THIS ANOTHER STATEMENT CONCERNING THIS INCIDENT?

2 A. YES.

3 Q. AND WHAT IS THE DATE OF THIS STATEMENT?

4 A. OCTOBER 8TH, 2009.

5 Q. ALL RIGHT. AND WHO IS THIS STATEMENT GIVEN BY?

6 A. WELL, IT SAYS PHONGPHUN MEAKCHAROON, BUT WE CALL HIM KEN.

7 HE'S A CHEF IN THE KITCHEN.

8 Q. ALL RIGHT. AND THIS IS HIS REPORT OF WHAT HAPPENED THAT
9 NIGHT INVOLVING CUC DANG AND SO FORTH AND SO ON; IS THAT RIGHT?

10 A. YES.

11 Q. AND DID YOU READ THIS BEFORE YOU TERMINATED HER?

12 A. YES.

13 Q. AND DID THIS INFORM YOUR DECISION IN PART AND IN THE
14 ACTION YOU TOOK?

15 A. YES.

16 MR. McMANIS: I'LL MOVE THAT IN ALSO, YOUR HONOR,
17 WITH THE LIMITING INSTRUCTION.

18 THE COURT: ALL RIGHT. IT WILL BE RECEIVED WITH THE
19 SAME LIMITATION.

20 MR. McMANIS: THANK YOU.

21 (DEFENDANT'S EXHIBIT 528 WAS RECEIVED IN EVIDENCE.)

22 BY MR. McMANIS:

23 Q. NOW, TO YOUR KNOWLEDGE, MR. WERNER, I THINK -- UNLESS I'M
24 MISTAKEN, MS. EDMAN INTERVIEWED MR. MEAKCHAROON AS WELL, AND
25 I'M GOING TO ASK YOU TO TURN BACK TO EXHIBIT 500.

1 HE WAS THE ELEVENTH WITNESS INTERVIEWED AND HIS INTERVIEW
2 APPEARS AT PAGE 47.

3 IF WE CAN TURN TO PAGE 47, PLEASE? AND, CINDY, WOULD YOU
4 PUT THAT UP ON THE SCREEN?

5 NOW, THIS IS MR. MEAKCHAROON'S INTERVIEW. AGAIN, WE HAVE
6 HEADINGS AND MS. DANG'S ALLEGATION THAT THERE WAS NO
7 INVESTIGATION OF THE OCTOBER 4TH, '09 COMPLAINT.

8 WE HAVE SEEN THE THREE STATEMENTS.

9 YOU'VE TOLD US THAT THE TAPE WAS REVIEWED --

10 THE COURT: LET'S NOT TESTIFY YOURSELF.

11 MR. MCMANIS: I KNOW, YOUR HONOR. I APOLOGIZE.

12 Q. NOW, THIS SUMMARY, FROM READING FROM THE REPORT, HE HEARD
13 MS. DANG COME INTO THE KITCHEN TALKING LOUDLY AND CUSSING AND
14 AN ARGUMENT BETWEEN MS. DANG AND MS. ELIAS.

15 MR. MEAKCHAROON'S STATEMENTS WERE CONSISTENT WITH THE FILE
16 MEMO ABOUT THE ACCOUNT AND THAT INCLUDED MORE DETAILS ABOUT
17 MS. DANG'S COMMENTS. WHEN ASKED HE STATED, QUOTE, "MS. DANG
18 STATED THIS IS F...ING B...S...." AND SHE HAS WHOLE WORDS.

19 I SAID, CALM DOWN. SHE WAS TRYING TO EXPLAIN. SOMETIMES
20 SHE'S VERY HARD TO UNDERSTAND. LEARNED SHE HAD AN ARGUMENT
21 WITH LINDA. LINDA WAS BEHIND HER. CUC KEPT YELLING AND WAS
22 MAD AND F...ING B...S.... I SAID I CAN'T HAVE THAT ATTITUDE.
23 I SAID, I'M THE REFERRE, NOT THE JUDGE.

24 NICK WILL BE HERE IN THE MORNING. IT'S HIS DECISION.
25 RIGHT NOW YOU HAVE TO CALM DOWN OR NO CHOICE BUT TO SEND YOU

1 HOME.

2 SO THAT WAS MR. MEAKCHAROON'S STATEMENT GIVEN TO THE
3 INVESTIGATOR; IS THAT RIGHT?

4 A. YES.

5 Q. NOW, WOULD YOU TURN TO PAGE 523, PLEASE?

6 DID I SAY PAGE 523 OR EXHIBIT 523?

7 A. YOU SAID PAGE 523, BUT I UNDERSTOOD EXHIBIT.

8 Q. IT'S OKAY. I MISSPOKE. EXHIBIT 523.

9 A. I HAVE IT.

10 Q. OKAY. THANK YOU.

11 CAN YOU IDENTIFY WHAT THIS REPRESENTS? THIS IS A PAGE
12 FROM SOMETHING, I BELIEVE.

13 A. THIS IS THE TABLE OF CONTENTS FOR OUR EMPLOYEE MANUAL
14 EFFECTIVE AUGUST 2008.

15 Q. WELL, I'M LOOKING AT PAGE 43 OF 56. IS THAT IN THERE?

16 A. 43 OF 56?

17 Q. YOU'VE GOT THE WHOLE MANUAL?

18 A. I'VE GOT THE WHOLE MANUAL.

19 Q. AND WOULD YOU LOOK AT PAGE 43 OF 56? IT'S BATES STAMPED
20 1963?

21 A. YES.

22 Q. NOW, THIS IS HEADED --

23 IS THIS IN EVIDENCE?

24 MS. MCCLELLAN: IT IS.

25 MS. NGUYEN: YES.

1 MR. MCMANIS: ALL RIGHT. WELL, LET'S PUT IT UP ON
2 THE SCREEN, PLEASE.

3 AND IF YOU'LL BLOW IT UP, CINDY.

4 Q. MAJOR RULES, DISCIPLINARY PROCEDURE. VIOLATION OF THE
5 FOLLOWING RULES CAN RESULT IN EITHER DISCHARGE OR SUSPENSION.

6 AND IT GOES ON TO EXPLAIN IT'S BASED ON THE SEVERITY OF
7 THE VIOLATION. BAY 101 HAS A RIGHT TO INVESTIGATE, IS UNDER NO
8 OBLIGATION TO NOTIFY THE EMPLOYEE UNTIL IT'S COMPLETED;
9 RESERVES THE RIGHT TO REDUCE THE LEVEL OF DISCIPLINARY ACTION
10 AND SO FORTH AND SO ON.

11 LET'S GO DOWN. THESE ARE THE ITEMS THAT, UNDER THIS
12 MANUAL, WOULD ENTITLE BAY 101 TO EITHER SUSPEND AN EMPLOYEE OR
13 DISCHARGE AN EMPLOYEE; IS THAT RIGHT?

14 A. YES.

15 Q. AND LET'S GO DOWN TO NUMBER 8.

16 COULD YOU BLOW THAT UP, PLEASE?

17 "HARASSING, THREATENING, INTIMIDATING, OR COERCING ANOTHER
18 EMPLOYEE OR CUSTOMER WHILE ON OR OFF DUTY."

19 DO YOU SEE THAT, MR. WERNER?

20 A. YES, I DO.

21 Q. AND DID YOU THINK THAT THAT DID OR DID NOT APPLY TO THE
22 INCIDENT OF OCTOBER 4TH?

23 A. I THOUGHT IT APPLIED TO THE INCIDENT ON OCTOBER 4TH.

24 Q. ALL RIGHT. NOW, MR. WERNER, WAS MS. DANG EVER CONSIDERED
25 FOR TERMINATION BEFORE DECEMBER 20, 2009?

1 A. YES.

2 Q. AND HOW DO YOU KNOW THAT?

3 A. BECAUSE I WAS INVOLVED IN A CONVERSATION WITH
4 JOHN ST. CROIX.

5 Q. AND MR. ST. CROIX WAS THE FOOD AND BEVERAGE MANAGER AND
6 EXECUTIVE CHEF UNTIL HE PASSED AWAY IN NOVEMBER 2007?

7 A. YES.

8 Q. AND HE WAS MS. DANG'S SUPERVISOR?

9 A. YES.

10 Q. AND WHAT DID MR. ST. CROIX TELL YOU -- AND AGAIN, I'M
11 ASKING THIS TO OFFER AN EXPLANATION FOR WHAT YOU WERE GIVEN
12 ABOUT HER EMPLOYMENT?

13 A. MR. ST. CROIX HAD A COUPLE OF CONCERNS PRIMARILY RELATED
14 TO HER ATTENDANCE ISSUES. HE WAS ALSO CONCERNED WITH LANGUAGE
15 IN THE WORKPLACE, SPECIFICALLY CURSING, AND WHAT I THOUGHT WAS
16 SOME INABILITY TO GET ALONG WITH HER COWORKERS.

17 Q. OKAY. WELL, LET'S EXAMINE THOSE.

18 FIRST, ATTENDANCE ISSUES, ABSENTEEISM AND WHAT HAVE YOU.
19 WHEN DID MR. ST. CROIX TELL YOU THAT THOSE HAD OCCURRED?

20 A. AT THE TIME OF THE CONVERSATION, I BELIEVE, AROUND THAT
21 TIME.

22 Q. OKAY. DO YOU RECALL WHETHER HIS CONCERN ABOUT THESE
23 ISSUES AND HIS CONTEMPLATION OF TERMINATING HER OCCURRED BEFORE
24 OR AFTER SHE MADE HER COMPLAINT ABOUT LUCIO SUAREZ IN APRIL OF
25 2007?

1 A. I THINK THEY WERE BEFORE.

2 Q. OKAY. AND WITH RESPECT TO THE CURSING AND WHAT HAVE YOU,
3 WHAT DO YOU RECALL THAT HE TOLD YOU ABOUT THAT?

4 A. THAT SHE FREQUENTLY CURSED AT HER COWORKER, MS. HUYNH,
5 ANH HUYNH, MAMA AHN.

6 Q. NOW, DO YOU RECALL WHAT IT WAS THAT HE REPORTED TO YOU
7 ABOUT CURSING MAMA AHN WITH RESPECT TO MAKING VIETNAMESE SOUP?

8 A. YEAH, THAT THEY HAD AN ARGUMENT OVER HOW TO MAKE
9 VIETNAMESE SOUP. THE RECIPE THAT WAS SUPPOSED TO BE FOLLOWED
10 WAS THE RECIPE THAT MAMA ANH HAD. SHE WAS THE VIETNAMESE COOK,
11 BUT MS. NGUYEN APPARENTLY HAD HER --

12 Q. MS. DANG?

13 A. I'M SORRY. APPARENTLY MS. DANG HAD HER OWN RECIPE THAT
14 SHE PREFERRED TO FOLLOW AND THAT CAUSED AN ARGUMENT BETWEEN THE
15 TWO OF THEM.

16 Q. WAS THERE SOME COMPLAINT ABOUT HER RECIPE?

17 A. I HAD SEVERAL COMPLAINTS FROM EMPLOYEES AND CUSTOMERS
18 ABOUT THE BROTH IN THE VIETNAMESE SOUPS ON MS. DANG'S SHIFT.

19 Q. AND WHAT WAS WRONG WITH IT?

20 A. IT TASTED LIKE WATER.

21 Q. NOW, DO YOU KNOW WHY MR. ST. CROIX DID NOT TERMINATE
22 MS. DANG IN JANUARY AND FEBRUARY, WHENEVER IT WAS, BEFORE HER
23 COMPLAINT OF APRIL 2007?

24 A. I DON'T KNOW WHY HE MADE THAT DECISION. OUR DISCUSSION
25 REVOLVED AROUND HIS DESIRE TO TERMINATE HER.

1 I ASKED HIM IF HE HAD -- IF HE FELT THAT HE HAD GIVEN HER
2 EVERY OPPORTUNITY TO IMPROVE HER WORK PERFORMANCE, IF SHE HAD
3 BEEN COUNSELLLED ABOUT THE CURSING AND HER RELATIONSHIP WITH HER
4 COWORKERS.

5 BUT I DON'T KNOW WHY HE MADE HIS DECISION.

6 Q. LET'S GO UP -- MY QUESTION -- I STARTED OUT THIS PART OF
7 THE EXAMINATION BY ASKING IF THERE HAD BEEN ANY CONSIDERATION
8 OF TERMINATING HER BEFORE DECEMBER 21, 2009.

9 LET'S FAST FORWARD TO THE INCIDENT OF OCTOBER 2009.

10 WE HAVE SEEN THAT THAT, UNDER THE MANUAL, IS GROUNDS FOR
11 DISCHARGE.

12 DID YOU CONSIDER DISCHARGING HER ON THAT OCCASION?

13 A. FOR THE OCTOBER 24TH INCIDENT?

14 Q. YES.

15 A. I CONSIDERED IT, YES.

16 Q. AND WHY IS THAT?

17 A. WELL NOT TO SECOND GUESS MR. ORTEGA AND MS. GILBERT,
18 MR. ORTEGA AND MS. GILBERT, I FELT THAT THAT WAS INEXCUSABLE
19 AND INAPPROPRIATE, NOT TO ARGUE WITH A FELLOW WORKER OR
20 ESPECIALLY AN EMPLOYEE ON THE FLOOR.

21 Q. OKAY.

22 A. IT SET A BAD EXAMPLE.

23 Q. AND WHAT ABOUT THE CUSTOMER?

24 A. AND THE CUSTOMER. I'M SORRY, AND A CUSTOMER, TOO. I
25 MISSPOKE. AND THE CUSTOMER WITH THE EMPLOYEE ON THE FLOOR.

1 Q. AND HOW ABOUT WHEN SHE WALKED OUT OF THE MEDIATION THAT
2 THE UNION AND THE FEDERAL MEDIATOR HAD ARRANGED? DID THAT --
3 HAD THAT THOUGHT OCCURRED TO YOU ABOUT TERMINATION IN THAT
4 CONTEXT?

5 A. IT DID. I THOUGHT THAT THAT'S AN INSTANCE OF HER WALKING
6 OFF THE JOB. THAT'S PART OF HER JOB WAS TO ATTEND THAT
7 MEDIATION.

8 AND I WAS UNHAPPY WITH THAT, BUT IT WAS MY DECISION THAT,
9 YOU KNOW, THE UNION GRIEVANCE AND HER WORKPLACE PERFORMANCE
10 SHOULD BE TREATED SEPARATELY AND I THOUGHT THAT THAT, YOU
11 KNOW -- I THOUGHT I COULD UNDERSTAND HER BEING UPSET IF THAT
12 WAS NOT GOING HER WAY.

13 IT DIDN'T EXCUSE IT, BUT I COULD UNDERSTAND IT.

14 Q. ALL RIGHT. IN ANY EVENT, SHE WASN'T TERMINATED EITHER
15 EARLIER BY MR. ST. CROIX OR AROUND THE TIME OF THE INCIDENT AND
16 THE MEDIATION BY YOU; IS THAT RIGHT.

17 A. THAT'S CORRECT.

18 Q. OKAY. NOW, I THINK YOU TESTIFIED THAT WHEN SHE WAS
19 TERMINATED, YOU FEDEX'D THE NOTICE OF TERMINATION WITH HER
20 FINAL CHECK TO HER; IS THAT RIGHT?

21 A. FEDEX'D OR OVERNIGHT MAIL, I BELIEVE, YES.

22 Q. SOME METHOD DESIGNED TO GET THAT INFORMATION AND THE CHECK
23 TO HER THE NEXT DAY?

24 A. YES.

25 Q. ALL RIGHT. DO YOU KNOW IF THERE ARE ANY REQUIREMENTS

1 UNDER THE LAW WHEN YOU TERMINATE AN EMPLOYEE TO BE SURE THAT
2 THEY GET PAID PROMPTLY?

3 A. YES.

4 Q. AND WHAT IS THE -- YOUR UNDERSTANDING ABOUT THAT?

5 A. AT THE TIME OF THEIR TERMINATION, THE EMPLOYER IS TO
6 PROVIDE THEM WITH ANY PAY THAT IS DUE TO THEM AND ANY ACCRUED
7 VACATION, AND IF THEY -- IF YOU PAY SICK, THEN YOU'RE SUPPOSED
8 TO PAY THE SICK AS WELL AND OTHER BENEFITS THAT ARE DUE.

9 YOU'RE ALSO SUPPOSED TO PROVIDE SOME NOTICE REGARDING
10 THEIR ABILITY TO DO -- THEIR RIGHT TO GO SEEK UNEMPLOYMENT
11 BENEFITS, AS WELL AS PROVIDING, IF YOU HAVE IT, COBRA COVERAGE.

12 Q. NOW, I THINK THE REPORT THAT MS. EDMAN DID AND SUBMITTED
13 TO YOU AND YOU READ AND RELIED ON IN YOUR APPROACH SUGGESTED
14 THREE THINGS:

15 ONE, SOME BANTERING AS IT WAS CALLED --

16 MS. NGUYEN: YOUR HONOR, LEADING.

17 THE COURT: SUSTAINED.

18 BY MR. MCMANIS:

19 Q. DO YOU RECALL THE THREE THINGS THAT THE REPORT
20 RECOMMENDED?

21 A. I DO.

22 Q. AND WHAT IS THE FIRST ONE?

23 A. WELL, THERE'S THE ISSUE OF BANTERING BETWEEN A SUPERVISOR
24 AND AN EMPLOYEE, SPECIFICALLY MAMA ANH AND NICK ORTEGA.

25 THERE'S A CONCERN STATED ABOUT THE CONFUSION THAT MAY BE

1 CREATED ABOUT THE TRANSFER POLICY.

2 AND THEN THERE'S A RECOMMENDATION REGARDING MS. DANG'S JOB
3 PERFORMANCE.

4 Q. UH-HUH. AND WHAT DID BAY 101 DO WITH RESPECT TO ITEM 1,
5 THE BACK AND FORTH BETWEEN MAMA ANH AND MR. ORTEGA?

6 A. THEY WERE BOTH COUNSELLED AND TOLD IT WASN'T APPROPRIATE
7 FOR THE WORKPLACE AND INSTRUCTED TO STOP IT.

8 Q. AND THE CIRCUMSTANCES OF THAT BANTERING AND MAMA ANH AND
9 MR. ORTEGA BACK AND FORTH WERE DISCUSSED BY THE INVESTIGATOR?

10 A. YES.

11 Q. ALL RIGHT. NOW, THE SECOND POINT, THE ISSUE OF
12 TRANSFERRING, WHAT DID YOU UNDERSTAND THE INVESTIGATOR
13 RECOMMENDED WITH RESPECT TO THAT?

14 A. WELL, THAT SHE RECOMMENDED CLARIFYING THE PROCEDURES FOR
15 WHEN A PERSON COULD SEEK A TRANSFER AND THE STEPS TO BE TAKEN
16 IN OBTAINING A TRANSFER.

17 SHE WAS CONCERNED -- I THINK THE CONCERN, AT LEAST MY
18 CONCERN WAS THAT IT WASN'T CLEAR TO PEOPLE WHEN THEY COULD
19 APPLY FOR A TRANSFER OR WHEN A TRANSFER WOULD BE GRANTED.

20 AND WE TOOK STEPS TO CHANGE THAT POLICY TO CLARIFY IT SO
21 THAT -- WELL, THE JOB HAD TO BE AVAILABLE, ONE, AND IT HAD TO
22 BE POSTED BEFORE A PERSON COULD APPLY FOR IT.

23 THERE'S A WRITTEN PROCEDURE TO APPLY FOR THE POLICY.
24 TRANSFER IS APPROVED BY BOTH THE OUTGOING SUPERVISOR AND THE
25 INCOMING SUPERVISOR, AND THAT ALL OF THE TRANSFERS WERE ROUTED

1 AND MAINTAINED THROUGH THE HUMAN RESOURCES DEPARTMENT SO THAT
2 THE NECESSARY EMPLOYMENT STEPS, AS WELL AS WORK PERMIT STEPS
3 COULD BE TAKEN TO MAKE SURE WE HAD ADEQUATE RECORDS TO SUPPORT
4 THE TRANSFER.

5 Q. AND THEN THE FINAL -- SO THAT WAS IMPLEMENTED?

6 A. YES.

7 Q. AND THEN THE FINAL COMMENT THAT THE INVESTIGATOR MADE WAS
8 THAT -- SUGGESTING A TRAINING PERIOD, EVALUATION OF PERFORMANCE
9 AND WHAT HAVE YOU; IS THAT RIGHT?

10 A. YES, AND ALSO PART OF THE FIRST STEP I THINK SHE SUGGESTED
11 WE DO SOME SUPERVISOR TRAINING FOR NICK ORTEGA, WHICH WE ALSO
12 DID.

13 Q. OKAY.

14 A. BUT THE THIRD STEP WAS PROVIDE SOME TRAINING FOR MS. DANG
15 SO THAT SHE UNDERSTOOD HER JOB.

16 Q. OKAY. AND THE PURPOSE OF THE MEETING THAT SHE WAS TO HAVE
17 WITH MR. SHAW, MS. GILBERT AND MR. ORTEGA WAS WHAT?

18 A. ONE, TO INFORM HER OF THE RESULTS OF THE REPORT; AND TWO,
19 TO INFORM HER OF THE TRAINING PROGRAM THAT WAS GOING TO BE
20 IMPLEMENTED TO ASSIST HER IN SUCCEEDING AT HER JOB AT BAY 101.

21 Q. OKAY. THIS WAS THE INVESTIGATION THAT BAY 101 HAD
22 UNDERTAKEN IN RESPONSE TO HER DEMAND OF OCTOBER?

23 A. YES.

24 Q. WHY WAS IT SCHEDULED FOR 7:00 A.M. WHEN SHE WAS GOING OFF
25 SHIFT?

1 A. MOST OF OUR WORKERS MAKE THEIR LIVING FROM THE TIPS THAT
2 THEY RECEIVE, NOT FROM THE WAGE THAT THEY'RE PAID BY THE
3 EMPLOYER.

4 MS. DANG IS ONE OF THOSE EMPLOYEES. HER MAIN INCOME COMES
5 FROM HER TIPS.

6 WE TYPICALLY SCHEDULE MEETINGS WITH OUR TIPPED EMPLOYEES
7 TOWARDS THE END OF THEIR SHIFT OR AFTER THEIR SHIFT IS OVER SO
8 THAT THEY DO NOT LOSE OUT OF THEIR INCOME POTENTIAL DURING THE
9 SHIFT TIME.

10 OVER THE YEARS OTHER EMPLOYEES HAD COMPLAINED THAT BEING
11 COUNSELLLED DURING THE MIDDLE OF THEIR SHIFT CREATED A HARDSHIP
12 NOT ONLY BECAUSE OF THE COUNSELLING, BUT BECAUSE THEY
13 WEREN'T -- THEY WERE TOO NERVOUS TO WORK AFTERWARDS SOMETIMES.

14 BUT ALSO IT INTERFERED WITH THEIR ABILITY TO EARN THEIR
15 TIPS WHEN THEY'RE AT WORK, AND THEIR PREFERENCE WAS TO DO THE
16 COUNSELLING AT THE END OF THE SHIFT.

17 SO THAT BECAME OUR POLICY OR PRACTICE.

18 Q. AND WHAT WAS REPORTED TO YOU ABOUT MS. DANG'S RESPONSE TO
19 THE REQUEST THAT SHE MEET WITH MANAGEMENT AT THE END OF HER
20 SHIFT?

21 A. WELL, WHAT WAS REPORTED TO ME WAS THAT HER HUSBAND CALLED
22 AND SAID SHE WOULDN'T BE ATTENDING ANY MEETING UNLESS HE WAS
23 PRESENT.

24 Q. AND DID YOU HAVE ANY INFORMATION AS TO WHETHER ANYONE HAD
25 ATTEMPTED TO MOVE THE MEETING UP SO THAT SHE COULD DO IT BEFORE

1 HER SHIFT ENDED IF THAT WAS HER DESIRE?

2 A. I WAS TOLD THAT NICK WAS IN THE PROCESS OF DOING THAT WHEN
3 MR. SUMMERS CALLED HIM.

4 Q. OKAY. AND HE SAID SHE'S NOT COMING?

5 A. YES.

6 Q. I THINK YOU MENTIONED IN YOUR TESTIMONY THAT YOU KNEW
7 MR. SUMMERS, OR KNEW OF HIM?

8 A. I HAD MET HIM ON A COUPLE OF OCCASIONS ON THE CARD ROOM
9 FLOOR, SO I KNEW HIM AS A PLAYER. I DIDN'T REALIZE INITIALLY
10 THAT HE HAD A RELATIONSHIP WITH MS. DANG, AND I THINK I LEARNED
11 THAT AT THE TIME OF THEIR MEDIATION, THAT THEY HAD SOME TYPE OF
12 RELATIONSHIP.

13 AND I'M TALKING ABOUT THE SUSPENSION MEDIATION BECAUSE HE
14 HAD APPEARED AT THAT -- HE ATTENDED THAT MEDIATION WITH HER.

15 Q. OKAY. AND THAT'S THE ONE THAT SHE WALKED OUT OF?

16 A. RIGHT. I THOUGHT THEY WERE JUST MAYBE BOYFRIEND AND
17 GIRLFRIEND OR SOMETHING LIKE THAT.

18 Q. ALL RIGHT. DID THE TERMINATION OF MS. GANG HAVE ANYTHING
19 TO DO WITH HER BEING VIETNAMESE?

20 A. NO.

21 Q. AND WITH HER BEING A WOMAN?

22 A. NO.

23 Q. AND WAS IT IN RETALIATION FOR THE COMPLAINT THAT SHE MADE
24 ABOUT MR. SUAREZ TWO AND A HALF YEARS LATER?

25 A. NO.

1 Q. AND WAS IT IN RETALIATION FOR THE ACTION SHE TOOK IN
2 OCTOBER, THREE MONTHS EARLIER, FILING A GRIEVANCE, MAKING A
3 COMPLAINT AGAINST THE CLUB, DEMANDING AN INVESTIGATION, THAT
4 SORT OF THING?

5 A. NO.

6 MR. MCMANIS: OKAY. THANK YOU, YOUR HONOR. THAT'S
7 ALL I HAVE AT THIS TIME.

8 THE COURT: ALL RIGHT. ANYTHING FURTHER?

9 MS. NGUYEN: YOUR HONOR, I'LL HAVE MORE THAN
10 15 MINUTES. BUT ARE WE BREAKING AT 1:30?

11 THE COURT: RIGHT.

12 MS. NGUYEN: THANK YOU, YOUR HONOR.

13 **AS-ON RECROSS-EXAMINATION**

14 BY MS. NGUYEN:

15 Q. MR. WERNER, YOU STATED EARLIER THAT MR. ST. CROIX, WHO HAS
16 PASSED AWAY, TOLD YOU ABOUT MS. DANG'S ISSUES WITH COWORKERS;
17 CORRECT?

18 A. RIGHT.

19 Q. AND YOU SAID THAT HE TOLD YOU ABOUT THAT PRIOR TO HER
20 APRIL 2007 LETTER TO H.R. TO COMPLAIN ABOUT MR. SUAREZ; IS THAT
21 RIGHT?

22 A. YES.

23 Q. AND YOU WERE AWARE THAT MR. ST. CROIX WANTED TO TERMINATE
24 MS. DANG BACK IN JANUARY OF 2007?

25 A. OR BEFORE, YES.

1 Q. AND WERE YOU AWARE, MR. WERNER, THAT MR. ST. CROIX HAD
2 BEEN TOLD ABOUT THE SEXUAL HARASSMENT BY MR. SUAREZ AGAINST
3 MS. DANG SINCE 2006?

4 MR. McMANIS: I'M GOING TO OBJECT. ASSUMES FACTS.

5 THE COURT: WOULD YOU REPHRASE THE QUESTION? IT
6 ASSUMES SOME FACTS WERE TRUE OR THE CASE.

7 YOU CAN REPHRASE THE QUESTION.

8 MS. NGUYEN: I WILL, YOUR HONOR.

9 Q. MR. WERNER, DID YOU KNOW THAT THERE HAD BEEN COMPLAINTS BY
10 MS. DANG AGAINST MR. SUAREZ BEFORE JANUARY 2007?

11 A. NO.

12 Q. AND DID YOU KNOW THAT MR. ST. CROIX HAD ACTUALLY TALKED TO
13 MR. SUAREZ ABOUT MS. DANG'S COMPLAINT?

14 A. NO.

15 Q. AND DID YOU KNOW, MR. WERNER, THAT MR. ST. CROIX WANTED TO
16 GET RID OF MS. DANG BECAUSE SHE WAS MAKING A COMPLAINT AGAINST
17 HIS FRIEND, MR. SUAREZ?

18 MR. McMANIS: YOUR HONOR, I'M GOING TO OBJECT TO THE
19 FORM OF THE QUESTION. THIS ASSUMES ALL KINDS OF THINGS ABOUT A
20 DEAD MAN.

21 THE COURT: WELL, THAT DOESN'T MATTER.

22 BUT I THINK THE QUESTION IS -- THE QUESTION ASSUMES THAT
23 THAT ACTION TOOK PLACE AND THIS WITNESS CERTAINLY HASN'T SAID
24 THAT AND WE HAVEN'T HEARD TESTIMONY THAT IT DID.

25 IF YOU WANT TO SAY, "DID YOU HEAR WHETHER OR NOT SOMETHING

1 HAPPENED," YOU CAN ASK IT THAT WAY.

2 BUT YOU CAN'T ASSUME THAT IT DID TAKE PLACE BY THE
3 QUESTION.

4 MS. NGUYEN: I'LL REPHRASE, YOUR HONOR. THANK YOU.

5 Q. MR. WERNER, ARE YOU AWARE THAT MR. SUAREZ WAS FRIENDS WITH
6 MR. ORTEGA?

7 THE COURT: REPHRASE THE QUESTION. ARE YOU AWARE
8 WHETHER OR NOT THERE WAS A FRIENDSHIP? THAT DOESN'T ASSUME
9 THAT THERE WAS.

10 MS. NGUYEN: I WILL, YOUR HONOR. THANK YOU.

11 Q. MR. WERNER, ARE YOU AWARE WHETHER OR NOT MR. SUAREZ IS
12 FRIENDS WITH MR. ORTEGA?

13 A. MR. SUAREZ WORKED FOR MR. ST. CROIX. I WASN'T AWARE
14 WHETHER THEY WERE FRIENDS OR NOT.

15 Q. WHAT ABOUT MR. ORTEGA? IS HE FRIENDS WITH MR. ORTEGA?

16 A. WHO?

17 Q. MR. SUAREZ.

18 A. AGAIN, THEY'RE COWORKERS. I DON'T KNOW THAT THEY'RE
19 FRIENDS. I DON'T KNOW THAT THEY SOCIALIZE AFTER WORK OR
20 ANYTHING ELSE.

21 Q. DO YOU KNOW OF ANY REASON WHY MR. ST. CROIX WOULD WANT TO
22 PROTECT MR. SUAREZ?

23 MR. MCMANIS: AGAIN, I'M GOING TO OBJECT. IT
24 ASSUMES THAT HE WOULD.

25 THE COURT: WELL, I'M NOT SURE THAT THAT DOES. I

1 THINK SHE SAID WHETHER OR NOT.

2 THE WITNESS: I'M SORRY. I DON'T THINK I UNDERSTOOD
3 THE QUESTION.

4 THE COURT: THE QUESTION DOESN'T ASSUME ANYTHING, SO
5 I'LL LET THE QUESTION GO.

6 MR. McMANIS: COULD WE HAVE THE QUESTION FOR THE
7 WITNESS, PLEASE?

8 THE COURT: SURE.

9 "DO YOU KNOW OF ANY REASON WHY MR. ST. CROIX WOULD WANT TO
10 PROTECT MR. SUAREZ?"

11 THE WITNESS: NO.

12 BY MS. NGUYEN:

13 Q. I'M GOING TO ASK YOU TO TAKE A LOOK AT EXHIBIT 550. I
14 THINK COUNSEL REFERRED TO IT EARLIER TODAY, AND IT HAS BEEN
15 ADMITTED AS AN EXHIBIT IN EVIDENCE.

16 A. OKAY.

17 Q. THIS IS THE NOVEMBER 5TH, 2009 MEMO FROM MS. KNAPP TO
18 MR. ORTEGA; CORRECT?

19 A. YES.

20 Q. AND DO YOU SEE THE VERY BEGINNING OF THE MEMO WHERE SHE
21 SAID "MY DOCUMENTATION OF THE ERRORS FOR MS. DANG IS ABOUT THE
22 SAME FOR ANY OTHER SERVER"?

23 A. YES.

24 Q. WOULD YOU SCROLL DOWN, PLEASE?

25 AND THE LAST PARAGRAPH WHERE SHE SAYS, "THIS SERVER HAS

1 THE POTENTIAL TO BE VERY GOOD" -- I'M SORRY. I'M STARTING TO
2 LOSE MY VOICE.

3 "THIS SERVER HAS THE POTENTIAL TO BE VERY GOOD AT HER
4 JOB."

5 DO YOU SEE THAT, MR. WERNER?

6 A. YES.

7 Q. AND "SHE ONLY NEEDS TO BE ABLE TO ASK FOR HELP AND NOT TO
8 FEEL AS IF SHE IS SINGLED OUT."

9 A. YES.

10 Q. AND DO YOU HAVE ANY REASON TO BELIEVE WHETHER OR NOT
11 MS. DANG FELT LIKE SHE WAS BEING SINGLED OUT?

12 A. OTHER THAN HER COMPLAINT? ARE YOU TALKING ABOUT NOW,
13 TODAY? OTHER THAN THE COMPLAINT SHE MADE, THE LETTER THAT SHE
14 WROTE TO ME?

15 Q. AT THE TIME.

16 A. I DON'T KNOW WHY SHE WOULD HAVE HAD ANY REASON TO FEEL
17 LIKE SHE WAS BEING SINGLED OUT ANY DIFFERENTLY THAN ANY OTHER
18 EMPLOYEE BEFORE SHE FILED HER COMPLAINT AND IT WAS
19 INVESTIGATED.

20 SO I'M NOT SURE IF THE ANSWER TO YOUR QUESTION IS YES OR
21 NO, BUT I DON'T KNOW OF ANY REASON WHY SHE SHOULD HAVE FELT
22 SINGLED OUT.

23 Q. AND THE REASON I ASK, MR. WERNER, IS I THINK YOU TESTIFIED
24 EARLIER THAT YOU TALKED TO MS. KNAPP.

25 A. YES.

1 Q. AND DID MS. KNAPP SAY ANYTHING ABOUT WHY MS. DANG WOULD
2 FEEL AS IF SHE WAS BEING SINGLED OUT?

3 A. I THINK MS. KNAPP SPENT A LOT OF TIME FREQUENTLY WITH
4 MS. DANG AND THAT MS. DANG -- THE FREQUENCY OF THAT AND THE
5 NUMBER OF ERRORS WAS SUCH THAT MS. DANG MAY HAVE HAD THE
6 PERCEPTION THAT MS. KNAPP WAS ONLY TALKING TO HER AND NOT TO
7 OTHER SERVERS REGARDING HER ERRORS.

8 I HAD THE IMPRESSION THAT MS. KNAPP'S INTERACTION OVER
9 MS. DANG'S INABILITY TO BALANCE AT THE END OF THE DAY WAS AN
10 ALMOST DAILY OCCURRENCE AND IT WAS -- MS. KNAPP FELT IT WAS TOO
11 MUCH FOR HER. IT WAS -- IT TOOK TOO MUCH OF HER TIME AND SHE
12 DIDN'T WANT TO BE RESPONSIBLE FOR DOING IT ANYMORE AND MAYBE
13 THAT'S WHAT SHE MEANT.

14 Q. EVEN THOUGH HER FIRST SENTENCE SAYS THAT THE DOCUMENTATION
15 OF MS. DANG'S ERRORS WERE ABOUT THE SAME AS FOR ANY OTHER
16 SERVER?

17 A. I THINK THE DOCUMENT THAT SHE PUT TOGETHER FOR EACH SERVER
18 WAS CONSISTENT AS TO IF THEY MADE AN ERROR, HER DOCUMENTATION
19 OF THOSE ERRORS WOULD HAVE BEEN THE SAME.

20 I DON'T THINK SHE'S TALKING ABOUT THE FREQUENCY OF THE
21 ERRORS. I THINK SHE'S TALKING ABOUT HOW SHE DOCUMENTS.

22 Q. MR. WERNER, I'M GOING TO ASK YOU TO GO TO THE PAGE WITH
23 THE BATES STAMP BAY 1535, PLEASE, THE SAME EXHIBIT.

24 A. OKAY, YES.

25 Q. THAT'S THE PRINT OUT THAT MS. KNAPP USES TO DOCUMENT THE

1 ERRORS MADE BY THE SERVERS; CORRECT?

2 A. FOR THAT DAY, YES.

3 Q. AND YOU SEE TOWARDS THE BOTTOM WHERE IT SHOWS FOR CUC DANG
4 THAT HER DISCREPANCY FOR THE DAY IS ABOUT \$20.60?

5 A. YES.

6 Q. AND THAT THERE ARE MANY OTHER SERVERS FOR THAT SAME DAY
7 WITH SIMILAR OR MORE DISCREPANCIES?

8 A. YOU'RE TALKING ABOUT THE OVER/SHORT COLUMN?

9 Q. THE VERY LAST COLUMN.

10 A. YES.

11 Q. AND THE SAME EXHIBIT IF YOU CAN KEEP GOING TO PAGE 1538.

12 A. OKAY.

13 Q. DO YOU SEE THERE THAT MS. DANG'S DISCREPANCY FOR THE DAY
14 TOTALS \$3.41?

15 A. I'M SORRY. I'M LOOKING FOR MS. DANG'S NAME.

16 Q. IT'S TOWARD THE BOTTOM.

17 A. I SEE IT. OKAY.

18 Q. AND THAT FOR THE SAME DAY, MANY OF THE OTHER SERVERS HAD
19 SIMILAR DISCREPANCIES OR EVEN MORE?

20 A. YES.

21 Q. I'M GOING TO ASK YOU NOW, MR. WERNER, TO GO BACK TO
22 EXHIBIT 1016, AND THE THIRD PAGE OF EXHIBIT 1016 IS THE
23 COUNSELLING MEMO. DO YOU SEE THAT?

24 A. YES.

25 Q. THAT'S THE COUNSELLING MEMO DATED OCTOBER 8TH, 2009 ABOUT

1 THE ARGUMENT WITH THE CUSTOMER AND THE COWORKER?

2 A. YES.

3 Q. AND YOU TESTIFIED EARLIER, I BELIEVE, THAT YOU RELIED ON
4 THIS AS ONE OF THE FACTORS FOR TERMINATING MS. DANG; CORRECT?

5 A. IT WAS A FACTOR, YES.

6 Q. AND EVERYTHING THAT IS REPORTED IN THIS COUNSELLING
7 MEMO -- I'D LIKE TO REPHRASE THAT QUESTION.

8 MR. ORTEGA IS THE ONE WHO PREPARED THIS COUNSELLING MEMO;
9 CORRECT?

10 A. I'M NOT SURE IF HE PREPARED IT OR SOMEONE ELSE DID. IT
11 HAS HIS SIGNATURE ON IT.

12 Q. AND FOR THE INCIDENT OF OCTOBER 4TH, 2009, WHERE EARLIER
13 WE LOOKED AT THE VIDEO, THE SURVEILLANCE VIDEO, DID YOU
14 YOURSELF REVIEW THE ENTIRE SURVEILLANCE VIDEO?

15 A. NO.

16 Q. DID YOU REVIEW ANY OF IT?

17 A. NO.

18 Q. DID YOU TALK TO ANY OF THE EMPLOYEES, THE OTHER COWORKERS
19 OF MS. DANG WHO SUBMITTED STATEMENTS?

20 A. I BELIEVE I DID.

21 Q. AND WHICH EMPLOYEE?

22 A. I BELIEVE I TALKED WITH MS. FONTILLAS -- WE'RE TALKING
23 ABOUT THE EMPLOYEES WHO SUBMITTED STATEMENTS -- AND I MAY HAVE
24 TALKED WITH MS. ELIAS.

25 Q. YOU TESTIFIED EARLIER THAT YOU RELIED UPON THE WRITTEN

1 STATEMENTS THAT WERE SUBMITTED; CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND THOSE WRITTEN STATEMENTS WERE OBTAINED BY MR. ORTEGA?

4 A. OR HUMAN RESOURCES. SOMEONE OBTAINED THEM.

5 Q. BUT YOU YOURSELF DIDN'T TALK TO THOSE WITNESSES TO GET
6 THOSE STATEMENTS; CORRECT?

7 A. NO.

8 Q. THAT'S CORRECT?

9 A. THAT'S CORRECT, I DID NOT TALK TO THEM TO OBTAIN THE
10 STATEMENTS.

11 Q. THANK YOU.

12 THE COURT: ALL RIGHT. THIS IS PROBABLY A GOOD
13 POINT TO BREAK.

14 MS. NGUYEN: YES, YOUR HONOR.

15 THE COURT: ALL RIGHT. WE'LL -- THAT WILL CONCLUDE
16 US FOR TODAY. WE'LL SEE YOU TOMORROW MORNING AT 8:30.

17 PLEASE REMEMBER NOT TO DISCUSS THE CASE WITH ANYBODY AND
18 HAVE A GOOD REST OF THE DAY.

19 (JURY OUT AT 1:28 P.M.)

20 THE COURT: I JUST WANT TO CONFIRM THAT THERE ARE NO
21 ANTICIPATED EVIDENTIARY PROBLEMS TOMORROW.

22 MR. MCMANIS: NOT TO MY KNOWLEDGE.

23 MS. NGUYEN: NO, YOUR HONOR. I THINK WE DEALT WITH
24 IT TODAY.

25 SOME OF THE WITNESSES THAT WE ANTICIPATED FOR TODAY WILL

1 BE THE ONES GOING TOMORROW.

2 THE COURT: OKAY. THANK YOU.

3 (COURT CONCLUDED AT 1:29 P.M.)

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Adriene Rodriguez

Lee-Anne Shortridge

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3 CERTIFICATE OF REPORTERS
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7 WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
9 CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
10 HEREBY CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14 
15

16

IRENE RODRIGUEZ, CSR, CRR
17 CERTIFICATE NUMBER 8076
18



19

LEE-ANNE SHORTRIDGE, CSR, CRR
20 CERTIFICATE NUMBER 9595
21

22 DATED: APRIL 30, 2013
23
24
25